



PROPOSED CHARTER

----- OF THE -----
CITY OF LOS ANGELES



INSTITUTE OF GOVERNMENTAL
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MAY 10 1999

UNIVERSITY OF CALIFORNIA

To be submitted to the Electors Tuesday, June 8, 1999



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IMPORTANT INFORMATION
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- Following is the proposed Charter approved for placement on the ballot.
- Included on the last page of this booklet are two proposed amendments to the proposed Charter. The Charter as proposed includes provisions for 15 Council members elected by district. These two proposed amendments provide for an increase in the size of the Council. One measure would increase the Council from 15 members to 21 members. The other measure would increase the Council from 15 members to 25 members.
- This proposed Charter is being submitted to the qualified voters of the City of Los Angeles at the June 8, 1999 General Municipal Election.
- This booklet should be used in conjunction with the Official Sample Ballot and Voter Information Pamphlet which will be sent to you separately.
- To save taxpayer money, one copy of this proposed Charter is being sent to each household. Please share this information with other voters in your household. Additional copies of this proposed Charter may be obtained by calling the City Clerk's Election Division at (213) 485-3581.

For General Information, please call (213) 485-3581

Under federal law, voter information pamphlets are available in English as well as in the following languages:

Si Ud. desea obtener una copia de la pamfleta en español por favor llame al teléfono 1-800-994-VOTE (8683)

Kung kailangang ninyo ang kopya ng pamplet sa Tagalog, tumawag po lamang sa 1-800-994-VOTE (8683)

이 팸플릿을 한국어로 원하시면 다음 전화번호로 연락하십시오.
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CHARTER OF THE CITY OF LOS ANGELES

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PREAMBLE

We the people of the City of Los Angeles, in order to establish a responsive, effective and accountable government through which all voices in our diverse society can be heard; to provide fair representation and distribution of government resources and a safe, harmonious environment based on principles of liberty and equality, do enact this Charter.

Volume I
Governance

[Model text placeholder]

Volume I
Governments

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ARTICLE I INCORPORATION AND POWERS

Sec. 100. Incorporation.

The City of Los Angeles shall continue to be a municipal corporation under the same name and possessed of all the property and interests of which it was possessed at the time the Charter takes effect. The boundaries of the City shall be the boundaries as established at the time the Charter takes effect, or as may later be changed in the manner authorized by law.

Sec. 101. Powers of the City.

The City of Los Angeles shall have all powers possible for a charter City to have under the constitution and laws of this state as fully and completely as though they were specifically enumerated in the Charter, subject only to the limitations contained in the Charter.

Sec. 102. Relationship to Other Governmental Entities.

(a) The City may, by ordinance, transfer or consolidate functions of the City government to or with appropriate functions of the state or county government or other governmental entities, or make use of functions of the state or county government or other governmental entities. The Charter provisions providing for the function of the City government transferred or consolidated may, by ordinance, be suspended during the continuation of the transfer or consolidation. Any transfer or consolidation may be repealed by ordinance, which repeal will terminate the suspension of the Charter provisions providing for the transferred or consolidated functions. Nothing in this section shall be construed as affecting transfers or consolidations approved prior to the operative date of the Charter.

(b) The City may exercise any of its powers or perform any of its functions and may participate in the financing of its efforts, jointly or in cooperation, by contract or otherwise, with one or more other cities, states, or other governmental bodies, the United States or any of its agencies.

Sec. 103. Delivery of Services.

Every City office and department, and every City official and employee, is expected to perform their functions with diligence and dedication on behalf of the people of the City of Los Angeles. In the delivery of City services and in the performance of its tasks, the government shall endeavor to perform at the highest levels of achievement, including efficiency, accessibility, accountability, quality, use of technologically advanced methods, and responsiveness to public concerns within budgetary limitations. Every analysis and review of the performance of the government and its officers shall seek to ascertain whether these high standards are being met, and if not, shall recommend methods of improvement.

Sec. 104. Restrictions on the Powers of the City.

The rights and powers granted by the Charter shall be subject to the restrictions set forth in this section or elsewhere in the Charter.

(a) **Mortgaging of Property.** The City shall have no power to mortgage its property for any purpose, but may buy property subject to mortgage.

(b) **License Taxes.** It shall require an ordinance adopted by a two-thirds vote of the Council to levy a license tax. No discrimination in the amount of license tax shall be made between persons engaged in the same business, other than by

proportioning the tax to the amount of business done, except that the Council by ordinance may provide for license tax exemptions and decreases to promote City economic development under the following circumstances. Any incentives shall be limited to predefined areas of the City, such as redevelopment areas, enterprise zones, employment and economic incentive areas, or revitalization zones, where other federal, state, or local economic incentive areas have been established by the Council, by ordinance or by other method required by state or federal law. In addition, any business tax exemptions or reductions shall require the adoption of an ordinance by the Council specifying the amount of the exemption or reduction; the period of time for which the exemption or reduction will be allowed; the specific business tax classification, or classifications, which will be eligible for the exemption or reduction; and the geographical boundaries within which the exemption or reduction will be applicable.

(c) **Sale of Public Utilities.** No public utility owned by the City shall be sold, leased or otherwise transferred without the assent of two-thirds of the registered voters of the City voting on the proposition. However, with the authorization of the Council by ordinance, the Board of Water and Power Commissioners shall have the power and authority to sell, lease, transfer or dispose of the public utility water distribution facilities owned by the City of Los Angeles located in the communities of Big Pine, Lone Pine, Independence and Laws in Inyo County, California, together with sufficient water or water rights to supply the service areas of those communities, to public agencies or utilities in those communities, without a vote of the people.

(d) **Use of Los Angeles River Bed.** The bed of the Los Angeles River, or any part of it, as now or hereafter defined and located, shall not ever be sold, granted, leased, transferred or alienated in any way, but shall be kept at all times for municipal purposes, free and clear of all encumbrances and obstructions, except as follows:

- (1) Franchises or rights may be granted by ordinance for crossings over or under the riverbed to railways, pipelines or other public utilities, plants or equipment, as long as they do not obstruct the flow of the Los Angeles River in times of flood, nor conflict with any longitudinal use of the riverbed by the City itself or other uses authorized in this section.
- (2) Franchises may be granted for the construction and operation of railroad tracks longitudinally along the riverbed only when such construction and operation is required in connection with a grade crossing plan for the elimination of grade crossings and the unification of all public terminal rail facilities, other than street and interurban railways, after the grade crossing plan has been approved by two-thirds of the voters voting on the question at a general or special election.
- (3) The City may grant permits for the removal of sand and gravel from the riverbed, so long as the removal of sand and gravel does not jeopardize or injure any structures authorized by this section.

(e) **Floor Area Restriction.** The total floor area contained in all the buildings on any one building site shall not exceed 13

times the buildable area of the site as such buildable area is defined by ordinance. The Council, by ordinance, may define and implement the provisions of this subsection and may further restrict and regulate the total floor area, height or bulk of buildings or structures.

(f) **Municipal Newspaper.** The City shall not appropriate any public money for the printing, publication, sale or distribution of a commercial municipal newspaper.

(g) **Business Enterprises.** The City shall not engage in any purely commercial or industrial enterprise, except upon a majority vote of the voters of the City voting on the question, unless the enterprise was engaged in by the City at the time the Charter becomes effective, or unless engaging in the enterprise is elsewhere specifically authorized in the Charter.

(h) **Rail Transit Assessments.**

(1) In the exercise of any powers it may have under any state, federal or other law, the City shall not approve the boundaries or the method of assessment of, or otherwise approve, an assessment district proposed to assess properties for benefits from a rail transit system or stations if assessments are to be made on properties in residential use before April 9, 1985, or under construction before that date for residential use in that district or any zone thereof.

For purposes of this subsection, a "residential use" of property shall include use as a single-family residence, a multi-family residence, a retirement home, or other property improved with a structure designed and used for housing a person or family, including property improved with a residential building which is temporarily vacant as well as property with a residential building under construction, but shall not include use as a hotel, motel or similar transient housing facility. In the event a property is in both residential and non-residential use, assessment may be approved, but shall be calculated only on the non-residential portion.

(2) Neither the Council nor any City board, officer or employee in the exercise of any power or authority it may have shall authorize or approve any grant of funds for a rail transit project unless the district, agency or entity proposing to initiate or implement the project has first entered into a contract with the City which binds the district, agency or entity:

(A) to not levy any assessments on any property in residential use or under construction prior to April 9, 1985, as that term is defined in subsection (h)(1) of this section, to pay in whole or in part for the acquisition, construction, development, joint development, operation, maintenance or repair of the project or stations connected therewith; and

(B) to pay or fully refund to the payors thereof any assessments required by law to be levied thereon.

(i) **Non-discrimination.** In the employment of persons in the service of the City, there shall be no discrimination in selection or compensation on account of race, religion, national origin, ancestry, sex, sexual orientation, age, disability, or marital status.

Sec. 105. Title to Property.

The title to all property of the City of Los Angeles, now owned or hereafter acquired, including all property in the name of any

officer, board, commission or department of the City, shall be vested and held in the name of the City of Los Angeles.

Sec. 106. Definitions.

(a) **Days.** If this Charter requires an act to be performed within a specified number of days, it shall mean consecutive calendar days unless otherwise stated. When the last day to perform an act falls on a weekend or City holiday, the period shall extend to the next business day.

(b) **Notice.** Unless otherwise provided by this Charter or ordinance, if this Charter requires notice to be given to an individual, that notice shall be deemed given on the date of personal service, or upon deposit in the mail, certified or first class mail, to the last known address. Unless otherwise provided by this Charter or ordinance, if notice is mailed, the time by which the recipient must take any action required under the Charter shall commence five days after this notice is mailed.

Sec. 107. Effect of Invalidity in Part.

If any section, subsection, sentence, clause or phrase of this Charter, or any amendment thereto, is for any reason held to be unconstitutional or otherwise invalid, that decision shall not affect the validity of the remaining portions of this Charter. The people of the City of Los Angeles hereby declare that they would have ratified and adopted this Charter and each section, subsection, sentence, clause and phrase thereof, and any amendment thereto, irrespective of the fact that any one or more other sections, subsections, sentences, clauses, phrases or amendment be declared unconstitutional or otherwise invalid.

TRANSITION PROVISIONS

Sec. 108. Intent of Voters.

Except with respect to the provision establishing the size of the City Council, it is the intent of voters adopting this Charter that it not be amended at the same election at which it is adopted other than by a conflicting measure that receives more votes than those received for this Charter.

Sec. 109. Adoption Date; Operative Date.

The Adoption Date of this Charter shall be that date upon which the adopted Charter is filed in accordance with state law. The Operative Date of this Charter shall be July 1, 2000, except that Article IX, Department of Neighborhood Empowerment shall be in effect and operative on the Adoption Date. In addition, the Council, Mayor, City officers and employees shall take those actions set forth in Section 118 after the Adoption Date of this Charter and prior to its Operative Date as prescribed in that section.

Sec. 110. Effect of Enactment on Existing Law and Offices.

(a) Until July 1, 2000, the City and its departments, boards, offices and employees shall continue to exercise and have the powers, duties and obligations provided in the Charter of the City immediately prior to the Adoption Date of this Charter, unless amended or repealed by Charter amendment, regardless of any conflict with the provisions of this Charter.

(b) On or after the Operative Date, to the extent the provisions of this Charter are the same in terms or in effect as provisions of the Charter prior to the Operative Date, they shall be construed and applied as a continuation of those provisions.

(c) On or after the Operative Date, all City ordinances, resolutions and other regulations in force on the Operative Date

and not inconsistent with this Charter shall remain in force until changed or repealed by the proper authority and in accordance with the provisions of this Charter. Ordinances, resolutions and other regulations in effect on the Operative Date, regardless of the method or manner of adoption, are repealed and superseded to the extent inconsistent with the provisions of this Charter.

Sec. 111. Obligations of Contract Not Impaired.

All rights, claims, actions, orders, obligations, proceedings, bond authorizations, contracts, franchises, leases and agreements existing on the Operative Date of this Charter shall not be affected by adoption of this Charter. To the extent functions, powers and duties have been reassigned, the office, agency or department to which functions, powers, and duties have been reassigned shall have charge of the matter.

Sec. 112. Previous Charter Sections Treated as Ordinance.

The following sections of the Charter as they existed immediately prior to the Operative Date of this Charter shall be treated as if enacted into ordinance, and may be amended, repealed or replaced by ordinance after the Operative Date of this Charter. To the extent of conflict or inconsistency between the provisions treated as if enacted into ordinance under this section and this Charter, this Charter shall prevail.

Sec. 37	Sec. 295.2	Sec. 385.1
Sec. 38	Sec. 297	Sec. 386
Sec. 49	Sec. 301	Sec. 390
Sec. 90	Sec. 302	Sec. 391
Sec. 92	Sec. 303	Sec. 501.1
Sec. 93	Sec. 304	Sec. 502
Sec. 155	Sec. 309	Sec. 503
Sec. 272	Sec. 310	Sec. 507
Sec. 273	Sec. 315	Sec. 508
Sec. 275	Sec. 316	Sec. 508.1
Sec. 285	Sec. 317	Sec. 509
Sec. 288	Sec. 318	Sec. 509.1
Sec. 290.1	Sec. 321	Sec. 510
Sec. 290.2	Sec. 324	Sec. 510.1
Sec. 291	Sec. 334	Sec. 511
Sec. 291.1	Sec. 335	Sec. 511.1
Sec. 291.2	Sec. 336	Sec. 511.2
Sec. 292.1	Sec. 338	Sec. 512
Sec. 292.2	Sec. 356	Sec. 512.1
Sec. 293	Sec. 363	Sec. 512.2
Sec. 295.1	Sec. 364	Sec. 513

Sec. 113. Effect on Pension and Retirement Benefits.

The adoption of this Charter is not intended in any way to diminish the benefits of any pension or retirement system of the City.

Sec. 114. Changes in City Offices.

(a) **City Administrative Officer.** On the Operative Date of this Charter, the person then serving as City Administrative Officer shall be deemed to be appointed to the position of Director of the Office of Administrative and Research Services. That office shall perform those duties assigned to it by the Charter.

(b) **City Engineer; Purchasing Agent.** On the Operative Date of this Charter, the positions of City Engineer and Purchasing Agent shall continue to exist to the extent provided by ordinance.

Sec. 115. Changes in City Departments.

After the Operative Date of this Charter, the departments of Animal Regulation and Building and Safety, which are no longer included in the Charter, shall continue to exist, and to perform the powers and duties prescribed for them in the Charter immediately prior to the Operative Date, until the departments, powers or duties are changed or eliminated by ordinance.

The adoption of this Charter is not intended to affect the powers and duties of the Department of Cultural Affairs or Department of Transportation or their respective commissions. Those powers and duties shall continue until changed or eliminated by ordinance.

Sec. 116. Status of Incumbent Officers and Employees.

(a) No change in the appointment process for any City officer or employee shall affect the status of any person serving as a City officer or employee as of the Operative Date of this Charter. Changes in the process for removal of any City officer or employee shall be effective upon the Operative Date of this Charter.

(b) Individuals in civil service positions that become exempt through the enactment of this Charter shall not have civil service standing as to the newly exempt positions, but will retain their civil service status as to their prior position in accordance with Section 1001 (e).

(c) Any City officer or employee in the service of the City on the Operative Date of this Charter, whose position becomes part of the classified civil service by reason of the enactment of this Charter, shall continue in his or her present position with the full seniority and other rights he or she would have if he or she had been under the classified civil service from the commencement of his or her City service.

Sec. 117. Changes in Civil Service Discipline Provisions.

Changes in the civil service discipline provisions of Section 1016 shall not affect any proceeding or action that has been commenced prior to the Operative Date of this Charter.

Sec. 118. Actions to be Taken Prior to Operative Date.

(a) **Changes in Boards.** After the Adoption Date of this Charter, the Council and Mayor shall take all steps necessary to:

- (1) Create Area Planning Commissions as prescribed in Section 552, and appoint the members of those boards whose terms shall commence July 1, 2000.
- (2) Define the residency requirement for two members of the Airport Commission provided in Section 630 of this Charter, and appoint two additional members, whose terms shall commence July 1, 2000, so that commission composition satisfies the residency requirements.
- (3) Define the residency requirement for the member of the Harbor Commission provided in Section 650 of this Charter prior to July 1, 2000. The Mayor shall appoint a member to the Commission satisfying the residency requirements of that ordinance if not otherwise satisfied, upon the first vacancy to occur in the Harbor Commission on or after July 1, 2000.
- (4) Establish the procedures for the election process to elect two additional members to the Board of Fire and Police Pension Commissioners provided in Section 1104(a) so that the terms of the two additional members may commence on July 1, 2000.

- (5) The Mayor shall appoint a City Employee Retirement System retiree to the first opening in a term of a commissioner of the Board of Administration for the Los Angeles City Employees Retirement System appointed by the Mayor, occurring on or after July 1, 2000.
- (6) The Board of Water and Power Commissioners shall appoint a department retiree to replace one of the Water and Power Commissioners serving on the Board of Administration of the Water and Power Employees Retirement System, so that the term of that member may commence July 1, 2000.
- (b) Rules, Regulations and Codes. After the Adoption Date of this Charter, and prior to its Operative Date:
 - (1) Each officer, department, agency, and board responsible for promulgating rules and regulations of the City under this Charter shall review all rules and regulations for which it is responsible, and amend and adopt rules and regulations consistent with this Charter to become effective July 1, 2000. The rules and regulations shall be submitted to the City Attorney sufficiently in advance of that date to permit City Attorney review.
 - (2) The City Attorney, City Administrative Officer and City Clerk shall review all provisions of the Administrative, Municipal, and Election Codes and report to the Mayor and propose to the Council the adoption of ordinances or amendments consistent with this Charter, to become effective July 1, 2000.
 - (c) Each department shall assess whether any changes in personnel or resources will be needed in light of changed duties under the new Charter, and make recommendations to the Mayor and Council.

Sec. 119. Repeal of Former Charter.

The provisions of the Charter of the City of Los Angeles, operative immediately prior to July 1, 2000, are hereby repealed except to the extent and for the purposes that this Charter expressly continues them in effect.

Sec. 120. Increase in Council Size.

If Section 241 of this Charter concerning Council size is amended through approval by the voters of a separate ballot

measure at the same election at which this Charter appears on the ballot, Section 204(g) shall read as follows, rather than as stated in Section 204(g) in Article II of this Charter: “(g) Effective Date of Redistricting; Terms. The Council members elected in the election held in 2001 shall serve two-year terms. The Council districts adopted by ordinance in 2002 shall first become effective beginning with the election held in 2003, at which time, the entire Council shall be elected. The Council members elected in 2003 from the even-numbered districts shall initially serve two-year terms and the members elected in 2003 from odd-numbered districts shall serve four-year terms. Members of the Council elected in 2005 from the even-numbered districts shall serve four-year terms, and thereafter all Council members shall serve four-year terms. The two-year terms contained in this section shall not constitute a term of office for purposes of the term limits contained in Section 206 unless a member serves two two-year terms or the member has served two terms of office prior to initiation of the two-year term.”

Sec. 121. Effect of New Charter on Board of Education.

In the event that this Charter is adopted by the qualified voters of the City of Los Angeles at the election held on June 8, 1999, but the provisions of Article IV and Article III relating to the Board of Education of the Los Angeles Unified School District are not approved by a majority of the qualified voters of that district voting at the election held on June 8, 1999, the provisions of Article IV shall be effective for elections of officers of the City only, and not for members of the Board of Education. In that event, the provisions of the Charter of the City of Los Angeles in effect immediately prior to July 1, 2000, shall remain in effect with respect to the Board of Education until amended.

Sec. 122. Elimination of Transition Provisions.

In the event any of the sections included in these Transition Provisions become obsolete in the judgment of the City Attorney, by virtue of the completion of all acts required under the section, the section shall be deemed expired and the City Clerk shall secure removal of that section from the next printing of the Charter.

ARTICLE II OFFICERS OF THE CITY

GENERAL PROVISIONS RELATED TO OFFICERS

Sec. 200. City Officers.

All officers of the City, both elected and appointed, shall be subject to recall as provided in Article IV. The officers of the City shall be:

- A Mayor
- The Members of the Council
- A City Attorney
- A City Clerk
- A Controller
- A Treasurer
- The members of the boards or commissions of the departments and the chief administrative officer of each department and office
- An Executive Director of the Board of Police Commissioners
- Other officers as prescribed by ordinance

Sec. 201. City Offices.

The City Offices shall be:

- Office of the Mayor
- Office of the City Council
- Office of the City Attorney
- Office of the Controller
- Office of Administrative and Research Services
- Office of the City Clerk
- Office of Finance

Sec. 202. Election of Officers at Large.

The following officers of the City shall be elected by the electors of the City, at large:

- Mayor
- City Attorney
- Controller

Sec. 203. Appointment and Removal of Officers.

Except as otherwise provided in the Charter, City officers shall be appointed by the Mayor, subject to confirmation by the Council. Except as otherwise provided in the Charter, the appointing power shall have the power of removal.

Sec. 204. Election of City Council Members; Redistricting.

(a) **Redistricting by Ordinance.** Commencing in 2002, the Council shall by ordinance redraw district lines to be used for all elections of Council members, including their recall, and for filling any vacancy in the office of member of the Council, after the effective date of the redistricting ordinance. Districts so formed shall each contain, as nearly as practicable, equal portions of the total population of the City as shown by the Federal Census immediately preceding the formation of districts.

(b) **Redistricting Commission.** There shall be a Redistricting Commission to advise the Council on drawing of Council district lines. The Commission members shall be appointed in the following manner: one by each Council member except that the Council President shall appoint two members, three by the Mayor, one by the City Attorney, and one by the Controller. No City officer or employee shall be eligible to serve on the Commission. The Redistricting Commission shall appoint a director and other personnel, consistent with budgetary approval, which positions shall be exempt from the civil service provisions of the Charter.

(c) **Redistricting Process.** The Redistricting Commission shall be appointed no later than the date by which the Census Bureau is to release decennial census data. A new Commission shall be appointed to advise the Council prior to each subsequent redistricting. The Commission shall begin the redistricting process at any time after the necessary data are obtained from the most recent Federal Census, but no later than January 1, 2002, and each subsequent tenth anniversary of that date. The Commission shall seek public input throughout the redistricting process. The Commission shall present its proposal for redistricting to the Council no later than a date prescribed by ordinance.

The Council shall adopt a redistricting ordinance no later than July 1, 2002, and each subsequent tenth anniversary of that date. Nothing in this section shall prohibit the Council from redistricting with greater frequency provided that districts so formed each contain, as nearly as practicable, equal portions of the total population of the City as shown by the Federal Census immediately preceding the formation of districts or based upon other population reports or estimates determined by the Council to be substantially reliable.

(d) **Criteria for Redistricting.** All districts shall be drawn in conformance with requirements of state and federal law and, to the extent feasible, shall keep neighborhoods and communities intact, utilize natural boundaries or street lines, and be geographically compact.

(e) **Effect of Redistricting on Incumbents.** No change in the boundary or location of any district by redistricting shall operate to abolish or terminate the term of office of any member of the Council prior to expiration of the term of office for which the member was elected.

(f) **Annexation or Consolidation.** Any territory annexed to or consolidated with the City shall, prior to or concurrently with completion of the proceedings therefor, be added to an adjacent district or districts by the Council by ordinance, which addition shall be effective upon completion of the annexation or consolidation proceedings notwithstanding any other provision of the Charter to the contrary.

(g) **Terms.** The terms of office for those members of the Council elected from odd-numbered districts shall commence during each fourth anniversary of the year 1997 and for the members elected from even-numbered districts shall commence during each fourth anniversary of the year 1999.

Sec. 205. Term of Office.

The Mayor, City Attorney, Controller and members of the Council shall hold their offices for a term of four years. The terms of all those officials shall commence on the first day of July next succeeding their election. Except where a vacancy in office is created pursuant to Section 207, the incumbents of the elected and appointed offices shall hold office until their successors have qualified.

Sec. 206. Term Limits.

No person may serve more than two terms of office as Mayor. No person may serve more than two terms of office as City Attorney. No person may serve more than two terms of office as Controller. No person may serve more than two terms of office as member of the City Council. These limitations on the number of

terms of office shall not apply to any unexpired term to which a person is elected or appointed if the remainder of the term is less than one-half of the full term of office.

Sec. 207. Vacancy in City Offices.

An office becomes vacant when:

(a) the incumbent dies, retires, resigns, is adjudged insane, pleads guilty or no contest to or is convicted of a felony, is removed from office or fails to qualify within ten days from the time he or she receives his or her certificate of election or appointment;

(b) the incumbent ceases to be a registered voter or resident of the City, where being a registered voter or City residency is a qualification for the office;

(c) the incumbent is convicted of an offense involving a violation of official duties, including, without limitation, a violation of the conflict of interest and government ethics provisions of the Charter or City ordinances. However, removal from office for violating conflict of interest or governmental ethics provisions shall be required only if a court determines that the seriousness of the offense and degree of culpability of the officer so warrant;

(d) the incumbent has been absent from the City without the consent of the Council for more than 60 consecutive days. Absence from the City of the incumbent of an elected office shall be deemed to be with the consent of the Council if the absence was caused by illness, injury or other reason, and if the incumbent could not reasonably have been expected to have returned to the City under the circumstances;

(e) the incumbent of an elected office, or the Chief of Police has ceased to discharge the duties of the office for 90 consecutive days, except when prevented by illness, injury, or other reasonable cause; or

(f) the incumbent of an elected office, or the Chief of Police is found by a court to be incapacitated according to the criteria contained in Section 208.

Sec. 208. Determination of Incapacity.

(a) For purposes of Section 207(f), an elected office and the office of Chief of Police become vacant when, in a *quo warranto* action or other applicable proceeding as may be established by state law, a court has found that:

(1) the incumbent is physically or mentally incapacitated due to illness, injury or other reason such that he or she cannot perform the duties of the office;

(2) the incumbent was so incapacitated for at least 90 consecutive days prior to the filing of the application with the Office of the California Attorney General for leave to sue in *quo warranto* or, if the application was not legally required, any other act commencing litigation under this subsection; and

(3) there is reasonable cause to believe that the incumbent will not be able to perform the duties of the office for the remainder of the term of office.

(b) If the City Clerk, after investigation, has reason to believe that all of the conditions set forth in subsection (a) exist, the City Clerk, on behalf of the City, shall initiate, or cause to be initiated, litigation by filing an application for leave to sue in *quo warranto* with the Office of the California Attorney General or by following any other applicable procedure as may be established

by state law. Litigation under this section, in *quo warranto* or as otherwise provided by state law, may also be brought by any person authorized to do so by state law.

Sec. 209. Code of Conduct of Elected Officials; Censure.

All elected officials of the City are expected to conform to the highest standards of personal and professional conduct. The Council shall have the power to adopt, by a two-thirds vote, a resolution of censure with respect to any member of the Council whose actions constitute a gross failure to meet such high standards, even if the action does not constitute a ground for removal from office under the Charter.

Sec. 210. Acting Incumbency in City Offices.

The City Controller, City Attorney, Treasurer, City Clerk and Director of the Office of Administrative and Research Services shall each designate an assistant or deputy, who shall become the acting incumbent in case of any vacancy in the office. The designation of acting incumbent shall be made in writing filed with the City Clerk, and may be changed from time to time. Upon a vacancy, the acting incumbent shall serve until the office is filled in accordance with Sections 409, 508(b) or 508(c). Any person so designated must possess the qualifications prescribed for the office and shall take the oath prescribed by the Charter before assuming his or her duties as acting incumbent. If a vacancy in the office occurs, and no acting incumbent has been designated, or if the designated acting incumbent is unable to serve, the Council may designate the acting incumbent for the office.

Sec. 211. Suspension Pending Trial.

Pending trial, the Council may suspend any elected officer, and the appointing power may suspend any appointed officer, against whom felony criminal proceedings, or criminal misdemeanor proceedings related to a violation of official duties as described in Section 207(c). The temporary vacancy shall be filled in accordance with the Charter.

Sec. 212. Prohibition on Council Member Serving in Other Capacity.

No member of the Council shall, during the term for which he or she has been elected, serve in any other office, if the position is appointed by or subject to confirmation by the Council.

Sec. 213. Additional Powers and Duties of Officers and Employees.

In addition to the powers and duties prescribed by the Charter, the officers, employees, and boards of the City shall have such other powers and perform such other duties as may be prescribed by the laws of the State of California, or by ordinance, not in conflict with the Charter, or by resolution adopted by the Council, not in conflict with the provisions of the Charter or ordinance.

Sec. 214. Creation of Additional Departments and Officers.

The Council may by ordinance create additional departments, offices and boards, and consistent with the Charter, provide for the election or appointment of officers other than those designated in the Charter, whenever the public necessity or convenience may require. The Council may by ordinance prescribe the duties of those officers, provided that those duties shall not include any of the duties of any officer designated in the Charter, except as authorized under Section 514.

Sec. 215. Oath of Office.

Every officer provided for in the Charter shall, before entering upon the discharge of the duties of office, take the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of California and the Charter of the City of Los Angeles, and that I will faithfully discharge the duties of the office of (here inserting the name of the office) according to the best of my ability."

Sec. 216. Annual Report.

Every officer or board of the City government shall make and present to the Mayor and Council an annual report relating to their work, and any other reports as may be required by the Charter or by the Council, by ordinance.

Sec. 217. Investigations and Proceedings.

(a) **Administration of Oaths.** The Mayor, Controller, Treasurer, the Zoning Administrator, and each member of the Council and of each board provided for in the Charter, and the secretary of each of those boards, shall have the power to administer oaths and affirmations in any investigation or proceeding pending before any of those officers or bodies, or concerning any demand on the City Treasury, and the City Clerk shall have the power to administer all oaths and affirmations required by the Charter.

(b) **Witnesses and Subpoenas.** The Mayor, Controller, Treasurer, the Zoning Administrator, Council, and each board provided for in the Charter shall have the power and authority to examine witnesses under oath and compel the attendance of witnesses and the production of evidence before them. Upon the request of the Mayor, Controller, Treasurer, President of the Council, or the presiding officer of any board, the City Clerk shall issue subpoenas in the name of the City, attested with the corporate seal, requiring the attendance and testimony of the witness or production of documents at a specified time and place before the Mayor, Controller, Treasurer, Council, or board requesting the subpoena. Nothing in this section shall require Council, any board or officer, or the Zoning Administrator to provide for examination of witnesses under oath in any particular proceeding.

(c) **Penalties and Procedure.** The Chief of Police, or other officer designated by ordinance, shall cause all such subpoenas to be served. The Council shall prescribe by ordinance suitable penalties for disobedience of subpoenas, and the refusal of witnesses to testify or produce evidence.

(d) **Board Examiners.** Under procedures prescribed by ordinance:

- (1) Each board of commissioners may appoint one or more examiners, or may designate one or more of its members to serve as examiners, whenever, under the Charter or by any law, a right of appeal or protest to the board is given, or where it is required to conduct any investigation or hearing;
- (2) Each board may adopt, reject or modify the report of any examiner in whole or in part, or may reconsider the matter in whole or in part;
- (3) Each examiner shall have power to administer oaths and require the City Clerk to issue subpoenas; and

- (4) Reference to an examiner shall not extend or curtail the time within which the action of any board must be taken, as required by the Charter, any other law or by ordinance.

Sec. 218. Compensation of Elected Officers and Limitation on Outside Activities.

(a) **Compensation.** The Mayor, City Attorney, Controller and members of the Council shall receive compensation for their services only as provided in this section and shall not receive any other compensation for those services.

- (1) **Salaries.** Members of the City Council shall be paid a salary equal to that prescribed by law for judges of the Municipal Court of the Los Angeles Judicial District or its successor in the event that court is dissolved or reconstituted.

The Controller shall be paid a salary that is 10% more than that of a Council member. The City Attorney shall be paid a salary that is 20% more than that of a Council member. The Mayor shall be paid a salary that is 30% more than that of a Council member.

The Controller shall be responsible for ascertaining the salary of Municipal Court judges and for setting and adjusting the salaries of elected officers in accordance with this section. Salaries shall be paid in bi-weekly increments unless the Council, by ordinance, prescribes otherwise.

- (2) **Other Benefits.** The Council may, by ordinance, subject to referendum as specified in Article IV of the Charter, confer benefits other than salary upon elected officers as additional compensation for their services. However, benefits from the Los Angeles City Employees' Retirement System may not be provided for elected officers that would exceed benefits generally provided to members of the System who are non-represented officers or employees of the City or, if there are no non-represented officers or employees, that would exceed benefits generally provided to other members of the System.
- (3) **Operative Date of Changes in Salaries.** The salaries of elected officers shall be adjusted in the manner provided in this section upon the effective date of any change in the salaries of Municipal Court judges.

(b) **Restrictions on Outside Activities.** The Mayor, City Attorney, Controller, and members of the Council shall devote their entire time to duties related to their offices. They shall not receive any compensation, including honoraria, for their services other than that provided in this section, except that which may be provided for their serving on governmental entities where payment is authorized for other governmental officers or employees serving in that capacity.

Sec. 219. Salary Setting.

The Council shall set salaries for all officers and employees of the City, including those officers and employees provided for in departments having control of their own definite revenues and funds, except for salaries specifically set or otherwise provided for by the Charter. Salaries shall be set by ordinance, unless otherwise set through collective bargaining agreements approved by the Council and entered into in accordance with the provisions of state law. Collective bargaining shall be conducted in accordance with procedures established by ordinance; provided, however, the ordinance shall provide an opportunity for the

Mayor to participate in a committee established to give advice and instructions with respect to the City's bargaining position in the meet and confer process. This committee shall also advise with respect to salaries set by ordinance.

Sec. 220. Restrictions on Compensation of Officers.

No officer of the City shall be compensated by fees or commissions. No officer of the City shall retain any fee, recompense or compensation received by him or her for the discharge of any duty of office from any person other than the City, but shall immediately pay over to the Treasurer all money received.

Sec. 221. Surety Bonds.

The Council shall by ordinance fix the amounts and terms of the official bonds of all officers and employees of the City who are required by the Charter or by ordinance to give a bond. These bonds shall be approved by the City Attorney as to form, and shall be filed with and remain in the keeping of the Office of the City Clerk. The City shall pay the premium on any official bond required by the Charter or ordinance.

Sec. 222. Conflicts of Interest; Board of Referred Powers.

(a) **City Attorney Opinion.** Any board, board member, officer or employee of the City may request the City Attorney to render an opinion concerning the obligation of the board, board member, officer (other than a member of the Council), or employee under applicable laws to refrain from voting or acting upon any matter, contract, sale or transaction to which the board, board member, officer or employee may be a party, or concerning any situation where it would violate state law or where it may not be in the public interest for the board, board member, officer or employee to act in a particular matter, contract, sale or transaction. Likewise, any elected City officer may request an opinion with respect to any board member.

If the City Attorney receives such a request, the City Attorney shall render a written opinion. If the request is made by an elected City officer concerning a board member, the opinion shall be rendered within ten days of the City Attorney's receipt of the request; provided, however, that if the City Attorney determines that the request does not contain sufficient information upon which to render an opinion, the City Attorney shall notify the person making the request, and the time within which the City Attorney must render the opinion shall not commence until that information has been provided to the City Attorney.

(b) **Transfer to the Board of Referred Powers.** If the City Attorney renders an opinion concluding that the board, board member, officer or employee is disqualified from acting under applicable law, or that it is not in the public interest for the board, board member, officer or employee to act in the matter, contract, sale or transaction involved, the board, board member, officer or employee shall be disqualified from acting on or in any way attempting to influence action on the matter. Except as otherwise provided in this section, the matter shall be transferred for action to the Board of Referred Powers, which is hereby created. In the event that one or more members of a board, but less than a quorum, are disqualified from acting pursuant to the opinion of the City Attorney, the member or members so disqualified shall not act on the matter, but the matter shall not be transferred to the Board of Referred Powers. If state law makes it unlawful for the board to act in the matter by reason of the disqualification of one

or more members, the matter shall be transferred for action to the Board of Referred Powers.

Unless a transfer is prohibited by applicable state law, the Board of Referred Powers is vested with the same power to act upon any matter, contract, sale or transaction transferred to it with the same force and effect as if acted upon by the board, officer or employee from whom the matter, contract, sale or transaction was transferred. The Council shall provide by ordinance for all matters relating to number of members, appointment and functioning of the Board of Referred Powers and the procedure applicable in referring matters to it for its determination.

EXECUTIVE BRANCH

Sec. 230. Mayor.

Except as otherwise provided in the Charter, management authority shall be vested in the Mayor who shall be the Chief Executive Officer of the City and shall devote his or her entire time to the duties of the office. The Mayor shall execute and uphold all laws and ordinances of the City.

Sec. 231. Powers and Duties.

The Mayor shall have the power and duty to:

(a) exercise management authority over all departments, agencies and appointed offices of the City, except where the Charter provides otherwise;

(b) appoint and remove staff as may be needed to perform the duties and carry out the responsibilities of the Mayor's office, subject only to budgetary appropriation;

(c) unless provided otherwise in the Charter, appoint chief administrative officers of City departments and appointed offices, and the members of the boards of commissioners created by the Charter, each subject to Council confirmation as provided in the Charter;

(d) unless otherwise provided in the Charter, appoint the members of standing commissions and boards created by ordinance that are advisory to or manage a department or appointed office, or perform regulatory functions, subject to Council confirmation as provided in the Charter;

(e) remove from office any chief administrative officer or commissioner, except where otherwise provided in the Charter;

(f) publicly address the Council on the state of the City, annually prior to the submission of the proposed budget;

(g) prepare and submit the Mayor's proposed annual budget to the Council for consideration in accordance with Article III of the Charter;

(h) represent the City in intergovernmental relations in accordance with City policy and supervise the City's intergovernmental relations function;

(i) declare a local emergency and coordinate the City's emergency response activities in accordance with procedures established by ordinance, and supervise emergency preparedness activities in the various departments and offices, including the Mayor's office, in a manner consistent with City policy;

(j) establish procedures and implement policies not inconsistent with the Charter or ordinance as are necessary to effectively manage and supervise the responsibilities entrusted to the Mayor through the issuance of executive directives, which, in the absence of conflicting provisions in the Charter or ordinance, and until revised or rescinded by the Mayor, shall be binding on all departments, commissions, appointed officers and employees of

the City. Executive directives shall be filed with the City Clerk and be published in the manner described in Section 251. Executive directives shall take effect 15 days after publication;

(k) certify in writing to the Council, for each appointment that requires Council confirmation, that in the Mayor's opinion the appointee is especially qualified by reason of training and experience for the position, and that the appointment is made solely in the interest of the City; and

(l) perform other duties and have other powers as are provided elsewhere in the Charter or by ordinance.

Sec. 232. Executive Budget.

There shall be an executive budget division within the office of the Mayor with the power and duty to:

(a) assist the Mayor in the preparation and submission to the Council of a proposed budget and executive summary in accordance with Article III; and

(b) review and monitor departmental budgets and expenditures to ensure that departmental expenditures do not exceed budgeted appropriations for that department.

The Mayor may request the assistance in these duties from other City departments and offices.

Sec. 233. Temporary Transfer of Employees.

The Mayor may make temporary transfers of employees, not to exceed 120 days in any calendar year, from one appointed office or department to another, except the Proprietary Departments, to relieve temporary shortages in personnel, or to meet temporary demands for additional employees caused by temporary or seasonal requirements in any office or department. The Mayor shall notify the City Clerk at the time the transfer of employees is made, and the City Clerk shall notify the President of the Council, the Director of the Office of Administrative and Research Services and the Board of Civil Service Commissioners of the transfer. The compensation of employees so transferred shall be a charge upon the office or department to which the employees are transferred for the period of the transfer. In the event of objection in writing to the temporary transfer by any of the appointing authorities involved, the Mayor shall determine whether or not the transfer shall be made.

Sec. 234. Joint Labor-Management Partnerships.

The City shall encourage joint labor-management partnerships to set goals, encourage agreements, solve problems, create incentives for outstanding individual or team performance and encourage flexibility and innovation. Collective bargaining and discipline shall not be within the jurisdiction of these partnerships.

LEGISLATIVE BRANCH

Sec. 240. Legislative Power.

All legislative power of the City except as otherwise provided in the Charter is vested in the Council and shall be exercised by ordinance, subject to the power of veto or approval by the Mayor as set forth in the Charter. Other action of the Council may be by order or resolution, not inconsistent with the duties and responsibilities set forth in the Charter or ordinance. Except as otherwise specifically provided in the Charter, the Council shall have full power to pass ordinances upon any subject of municipal concern.

Sec. 241. Council Size.

The Council shall consist of 15 members, elected by districts as provided elsewhere in the Charter.

Sec. 242. Conduct of Business.

The Council shall be the sole judge of the election and qualification of its members. Meetings and records of the proceedings of the Council and of the committees of the Council shall be open to the public, except that closed sessions may be held as permitted by law. The Council shall have the exclusive power to organize its business, prescribe the rules of its proceedings and preserve order at its meetings, subject to the following:

(a) The Council shall hold regular meetings at least three days each week. Meetings may be held in City Hall or elsewhere in the City. By resolution, the Council may establish periods during which the Council or its committees will be in recess. The Council and its committees may also each hold special meetings with proper notice.

(b) The Council, by ordinance or resolution, shall establish a sufficient number of committees to enable it to carry out its duties. The duty of the Council and its committees is to become fully informed of the business of the City so as to oversee all the functions of the City government, and to report to the Council any information or recommendations necessary to enable the Council to properly legislate. Committees shall have the power of investigation, but shall have no administrative control over the various functions of the City government. The administration of the City government shall be vested in the officials designated in the Charter to perform those functions. The President of the Council shall appoint the members and the chair of the committees and each Council member shall be appointed to at least one committee.

Sec. 243. President and President Pro Tempore.

(a) The Council shall elect one of its members as presiding officer, who shall be called the President of the Council. In case of any vacancy in the office of Mayor pending appointment and qualification of a successor, or in case of unavailability due to sickness, absence from the state, or disability of the Mayor, the President of the Council shall act as Mayor of the City. The President of the Council, while acting as Mayor, shall not lose his or her rights as a member of the Council.

(b) The Council shall elect one of its members "President Pro Tempore" who shall act as presiding officer in the absence of the President of the Council and, in case of vacancy in the office of President of the Council, or in the case of unavailability due to sickness, absence from the state or disability of the President of the Council, shall exercise the powers and duties of the President of the Council under the provisions of this section.

(c) The Council shall provide by ordinance for the succession from among its members to the powers and duties of the President Pro Tempore in case of unavailability due to sickness, absence from the state or disability of the President Pro Tempore, or in the case of a vacancy in that office.

Sec. 244. Quorum and Vote Necessary to Take Action.

Two-thirds of the members of the Council shall constitute a quorum for the transaction of business. Nothing in the Charter shall prevent a smaller number from transacting business by a majority vote of members present to the extent necessary to fill

vacancies in the membership of the Council in the manner provided in Article IV, where no quorum can be assembled except by filling the vacancies. Except as otherwise provided in the Charter, action by the Council shall be taken by a majority vote of the entire membership of the Council. Whenever in the Charter a certain proportion of the Council is required for the performance of any act, it shall mean that proportion of the entire membership of the Council.

Sec. 245. City Council Veto of Board Actions.

Actions of boards of commissioners shall become final at the expiration of the next five meeting days of the Council during which the Council has convened in regular session, unless the Council acts within that time by two-thirds vote to bring the action before it or to waive review of the action, except that as to any action of the Board of Police Commissioners regarding the removal of the Chief of Police, the time period within which the Council may act before the action of the Board shall become final shall be ten meeting days during which the Council has convened in regular session.

(a) **Action by Council.** If the Council timely asserts jurisdiction over the action, the Council may, by two-thirds vote, veto the action of the board within 21 calendar days of voting to bring the matter before it, or the action of the board shall become final. Except as provided in subsection (e), the Council may not amend, or take any other action with respect to the board's action.

(b) **Waiver.** The Council may, by ordinance, waive review of classes or categories of actions, or, by resolution, waive review of an individual anticipated action of a board. The Council may also, by resolution, waive review of a board action after the board has acted. Actions for which review has been waived are final upon the waiver, or action of the board, as applicable.

(c) **Effect of Veto.** An action vetoed by the Council shall be remanded to the originating board, which board shall have the authority it originally held to take action on the matter.

(d) **Exempt Actions.** The following actions are exempt from Council review under this section:

- (1) actions of the Ethics Commission;
- (2) actions of the Board of Fire and Police Pension Commissioners;
- (3) actions of the Board of Administration for Los Angeles City Employees Retirement System;
- (4) actions of the Board of Administration of Water and Power Employees Retirement Plan;
- (5) quasi-judicial personnel decisions of the Board of Civil Service Commissioners;
- (6) actions of a board organized under authority of the Meyers-Milias Brown Act for administration of employer-employee relations;
- (7) individual personnel decisions of boards of commissioners other than the Board of Police Commissioners; and
- (8) actions which are subject to appeal or review by the Council pursuant to other provisions of the Charter, ordinance or other applicable law.

(e) **Exceptions for Actions of City Planning Commission and Area Planning Commissions.** The Council shall not be limited to veto of actions of the City Planning Commission or Area Planning Commissions, but, subject to the time limits and other limitations of this section, after voting to bring the matter

before it, shall have the same authority to act on a matter as that originally held by the City Planning Commission or Area Planning Commission.

Sec. 246. Provision of Quarters; Creation of Positions.

Except as to those departments given control of their own revenues or funds, the Council shall provide suitable quarters, equipment and supplies for the various departments and offices of the City government. It shall create the necessary positions in addition to those created by the Charter in those departments and offices, authorize the necessary deputies, assistants and employees, and provide the necessary funds for carrying on the work of the departments and offices. Upon request from any department given control of its own revenues or funds, the Council may assist the department in the performance of its functions with appropriations of money or otherwise.

Sec. 247. Public Improvements.

The City shall have power to provide for public improvements by contract or by the direct employment of labor and purchase of materials. The Council may cause the costs and expenses of the improvements, including any damages to private property caused thereby, to be paid from the General Fund or a special fund of the City, or may make those costs and expenses, including incidental expenses and damages, a lien upon the abutting property, or upon property in districts according to benefits. The Council may establish, by ordinance, an assessment process, the priority of the lien and the method for enforcement, and may levy and collect or cause to be levied and collected assessments upon property according to frontage or upon property in districts according to benefits, to pay the cost of the improvements. The City may cause to be issued and sold bonds, notes and other evidences of indebtedness, bearing interest, extending over a period not exceeding such time as permitted by state law, to represent any or all the assessments in accordance with requirements and procedures to be established by ordinance.

Sec. 248. Issuance of Housing Revenue Bonds.

In accordance with a procedure established by ordinance, the Council may issue or authorize the issuance of revenue bonds, notes and other evidences of indebtedness from time to time, the proceeds of which may be used for the purpose of acquiring, developing, constructing and rehabilitating, and for the purpose of making loans for the financing or refinancing of the acquisition, development, construction and rehabilitation of, single family and multi-family residential housing developments, including low and moderate-income housing developments and market rate housing developments. The City may cooperate with and receive aid from other agencies of government in accomplishing the purposes described in this section, but shall make no contributions to the payment of interest or principal due on any of these revenue bonds, notes or other evidences of indebtedness, from taxes imposed by the City.

Sec. 249. Ordinances – Enacting Clause.

The enacting clause of all ordinances shall be substantially as follows:

“The People of the City of Los Angeles do ordain as follows:”

Sec. 250. Procedure for Adoption of Ordinances.

(a) **Introduction and Passage.** No ordinance shall be passed finally on the day it is introduced, but it shall be held over for one week, unless approved by unanimous vote of all the members of

the Council present, provided there is not less than three-fourths of all the members present.

(b) **Presentation to Mayor.** Every ordinance passed by the Council shall, before it becomes effective, be signed by the City Clerk or other person authorized by the Council, and be presented to the Mayor for approval and signature. If the Mayor does not approve the ordinance, the Mayor shall endorse on it the date of its presentation to him or her, and return it to the City Clerk with a written statement of objections to the ordinance. The City Clerk shall endorse on the ordinance the date of its return to him or her. If the Mayor does not approve or veto an ordinance in accordance with this section within ten days after its presentation to him or her, the ordinance shall be as effective as if signed by the Mayor.

(c) **Override by Council.** The City Clerk shall present the ordinance, with the objections of the Mayor, at the first Council meeting after the Clerk has received the Mayor's objections. The Council may pass any ordinance over the veto of the Mayor within 45 days after the objections of the Mayor are presented to the Council, by two-thirds vote of the Council or by three-fourths vote where two-thirds vote or more was required for passage of the original ordinance.

Sec. 251. Publication or Posting of Ordinances.

All ordinances finally adopted under the provisions of the Charter shall be published in the English language at least once in some daily newspaper circulated in the City of Los Angeles, or publicized by some other method authorized by ordinance. No ordinance shall be valid or take effect until that publication or satisfaction of other method authorized by ordinance. As used in the Charter, publication of an ordinance shall mean compliance with this section.

Sec. 252. Effective Date of Ordinances, Orders and Resolutions.

Orders and resolutions shall take effect upon their passage unless requiring Mayoral approval, in which case they shall take effect upon Mayoral approval or override of Mayoral veto. An ordinance shall go into effect 31 days from its publication, except for urgency ordinances adopted pursuant to Section 253, and except for the following ordinances, which shall take effect upon their publication:

- (a) an ordinance ordering, or otherwise relating to an election;
- (b) an ordinance ordering or otherwise relating to the levying or collection of the annual City taxes;
- (c) an ordinance which provides for or changes any of the following with respect to streets, boulevards, alleys, courts or other public places: name, curb lines, grade, improvement, opening, widening, straightening or extension;
- (d) an ordinance relating to the construction of sewers or storm drains;
- (e) an ordinance relating to the bringing or conduct of suits or actions or the levying or collection of local assessments upon private property for any of the purposes referenced in subsections (c) and (d);
- (f) an ordinance relating to the condemnation of lands for parks, boulevards or playgrounds under laws or ordinances providing for the payment of the expense thereof by local assessment upon private property;
- (g) an ordinance relating to creating classes of positions, setting salaries, authorizing the employment of personnel or prescribing conditions of employment;

(h) an ordinance establishing Council or Board of Education districts;

(i) an ordinance establishing pension or retirement benefits in accordance with Article XI of the Charter;

(j) an ordinance making or authorizing any contract, other than an ordinance granting any franchise, right or privilege; and

(k) any ordinance making or authorizing the sale or issuance of bonds of the City or of any district within the City.

Sec. 253. Urgency Ordinances.

The Council may adopt an urgency ordinance that shall take effect upon its publication. An urgency ordinance may only be adopted if required for the immediate preservation of the public peace, health or safety. Any urgency ordinance shall contain a specific statement showing its urgency, and must be passed by a three-fourths vote of the Council. No grant of any franchise, right or privilege shall ever be construed to be an urgency measure.

Sec. 254. Legislation Pending Before State and Federal Government.

The Council, by resolution, may establish the official position of the City with respect to legislation proposed to or pending before the state or federal government. The resolution shall be subject to veto by the Mayor, and override of the Mayor's veto by a two-thirds vote of the Council. The Council, by ordinance, shall adopt procedures to implement the provisions of this section, which procedures shall set the time periods for Council and Mayoral action.

CONTROLLER

Sec. 260. Auditor and General Accountant.

The Controller shall be the auditor and general accountant of the City and shall exercise a general supervision over the accounts of all offices, departments, boards and employees of the City charged in any manner with the receipt, collection or disbursement of the money of the City. The Controller shall be elected as provided in Section 202.

Sec. 261. Powers and Duties.

The Controller shall:

- (a) appoint assistants, deputies, clerks and other persons as the Council shall prescribe by ordinance;
- (b) prescribe the method of keeping all accounts of the offices, departments, boards or employees of the City in accordance with generally accepted accounting principles, except that any change of the system of accounting shall first be authorized by the Council;
- (c) regularly review the accounting practices of offices and departments and upon finding serious failings in accounting practices, be empowered to take charge of the accounting function, and thereafter assist the office or department in implementing appropriate accounting standards and practices;
- (d) maintain a complete set of accounts which shall be deemed the official books and accounts of the City, which shall show at all times the financial condition of the City, the state of each fund, including funds of departments responsible for managing their own funds, the source from which all money was derived and for what purposes all money has been expended;
- (e) in compliance with generally accepted government auditing standards, audit all departments and offices of the City, including proprietary departments, where any City funds are either received

or expended; be entitled to obtain access to all department records and personnel in order to carry out this function; establish an auditing cycle to ensure that the performance, programs and activities of every department are audited on a regular basis, and promptly provide completed audit reports to the Mayor, Council, and City Attorney and make those reports available to the public;

(f) maintain a reconciliation between the accounts in all offices and departments with the accounts in the Controller's office, and from time to time, verify the condition of all City funds in the City Treasury, and report to the Mayor and Council thereon;

(g) allocate among the several respective funds all public money at any time in the City Treasury not otherwise specifically allocated and appropriated by law or ordinance, and promptly notify the Treasurer of the allocation or appropriation;

(h) report to the Mayor and Council, at times established by law, the condition of each fund, and make other reports as the Mayor or Council requests;

(i) maintain each fund on a parity with its obligations at all times by transferring from the Reserve Fund as a loan to any fund which may become depleted through tardy receipt of revenues, and upon receipt of revenues sufficient to make an allocation as will restore each fund to parity, retransfer the amount of the loan to the Reserve Fund;

(j) monitor the level of debt incurred by the City and report periodically to the Mayor and Council on City debt; and

(k) conduct performance audits of all departments and may conduct performance audits of City programs, including suggesting plans for the improvement and management of the revenues and expenditures of the City. Nothing in this subsection shall preclude the Mayor or Council from conducting management studies or other review of departmental operations.

Sec. 262. Approval of Demands on Treasury.

(a) The Controller shall, prior to approval of any demand, make inspection as to the quality, quantity and condition of services, labor, materials, supplies or equipment received by any office or department of the City, and approve before payment all demands drawn upon the Treasury if the Controller has adequate evidence that:

- (1) the demand has been approved by every board, officer or employee whose approval is required by the Charter or ordinance;
- (2) the goods or services have been provided, except that advance payment may be authorized by ordinance for specified categories of goods and services;
- (3) the payment is lawful;
- (4) the appropriation for the goods or services has been made;
- (5) the prices charged are reasonable;
- (6) the quantity, quality and prices correspond with the original specifications, orders or contracts; and
- (7) any additional criteria established by ordinance have been satisfied.

(b) Notwithstanding subsection (a), the Controller shall delegate to the various offices and departments the duties of inspection of goods and services and approval of demands, in accordance with methods for inspection and approval established by the Controller, but the Controller may suspend the authority delegated pursuant to this subsection upon a finding of abuse of that authority or on a determination that the office or department

lacks adequate controls to exercise that authority properly. In the event of suspension of the authority delegated pursuant to this subsection, the Controller shall assist the office or department to achieve adequate controls and standards prior to reinstatement of that authority to the office or department.

(c) The Controller shall withhold approval of any demand, in whole or in part, if there is a question as to whether it is improper, illegal, or unauthorized, and immediately file a report with the Mayor and Council stating the objections to the demand. The Council shall promptly consider the report and may overrule or sustain the objections of the Controller.

(d) The Controller shall keep a record of all demands on the Treasury approved by the Controller and of all demands to which objections have been made and overruled.

Sec. 263. Approval of Expenses of Controller.

All demands for the expenses of the office of the Controller shall, before payment, be presented to the Mayor, who shall have the same powers as to approval or disapproval as are exercised by the Controller in the case of other demands. The action of the Mayor shall be subject to review by the Council.

Sec. 264. Reduction of Demand on Treasury.

No demand upon the Treasury shall be allowed by the Controller in favor of any person or entity indebted to the City without first deducting the amount of the indebtedness, to the extent permitted by law.

Sec. 265. Payment of Bonds.

Nothing in this Article shall be construed as interfering with or preventing the payment by the Treasurer of principal and interest on bonds payable by the City in accordance with the California Constitution, laws and ordinances authorizing the issuance and payment of those bonds.

Sec. 266. Periodic Surveys of Proprietary Departments.

(a) The Controller, Council and Mayor shall jointly cause, at least once in every five years, an industrial, economic and administrative survey to be made of the business and property of each of the Harbor, Water and Power and Airports Departments and shall select an independent qualified industrial engineer or organization specializing in such surveys to conduct the survey. The cost of each survey shall be paid for from the funds of the surveyed department.

(b) Each survey shall be made in consultation with the Mayor and City Council to ascertain if the surveyed department is operating in the most efficient and economical manner.

(c) A copy of the report of each survey shall be transmitted to the Mayor, Council, and board of the surveyed department and shall be made available to the public.

CITY ATTORNEY

Sec. 270. Qualifications.

The City Attorney must be qualified to practice in all the courts of the state, and must have been so qualified for at least five years immediately preceding his or her election. The City Attorney shall devote his or her entire time to the duties of the office.

Sec. 271. Powers and Duties.

The powers and duties of the City Attorney shall be as follows:

(a) The City Attorney shall represent the City in all legal proceedings against the City. The City Attorney shall initiate appropriate legal proceedings on behalf of the City.

(b) The City Attorney shall be the legal advisor to the City, and to all City boards, departments, officers and entities. The City Attorney shall give advice or opinion in writing when requested to do so by any City officer or board.

(c) The City Attorney shall prosecute on behalf of the people all criminal cases and related proceedings arising from violation of the provisions of the Charter and City ordinances, and all misdemeanor offenses arising from violation of the laws of the state occurring in the City.

(d) The City Attorney shall approve in writing the form of all surety or other bonds required by the Charter, or by ordinance, before the bonds are submitted to the proper body, board or officer for final approval, and no such bond shall be approved without approval as to form by the City Attorney. Except as otherwise provided in the Charter, the City Attorney shall approve in writing the form of all contracts before the contracts are entered into by or on behalf of the City.

(e) The City Attorney shall keep records of all actions and proceedings in which the City or any officer or board is an interested party, and copies of all written opinions given by the City Attorney's office. The City Attorney shall comply with all requests for information from the Mayor or Council, and shall report on a regular basis to the Mayor and Council on all matters of litigation, in a form and at times specified by ordinance. In all litigation involving potential financial liability of the City, the City Attorney shall keep the Mayor and Council informed as to the status and progress of litigation.

Sec. 272. Control of Litigation.

The civil client of the City Attorney is the municipal corporation, the City of Los Angeles. The City Attorney shall defend the City in litigation, as well as its officers and employees as provided by ordinance. The City Attorney may initiate civil litigation on behalf of the City or the People of the State of California, and shall initiate civil litigation on behalf of the City when requested to do so by the authority having control over the litigation as set forth below. The City Attorney shall manage all litigation of the City, subject to client direction in accordance with this section, and subject to the City Attorney's duty to act in the best interests of the City and to conform to professional and ethical obligations. In the course of litigation, client decisions, including a decision to initiate litigation, shall be made by the Mayor, the Council, or boards of commissioners in accordance with this section. However, the decision to settle litigation shall be made in accordance with Section 273.

(a) **Council.** The Council shall make client decisions in litigation involving matters over which the Charter gives the Council responsibility.

(b) **Mayor.** The Mayor shall make client decisions in litigation involving matters over which the Charter gives the Mayor responsibility.

(c) **Boards.** The boards of the Proprietary Departments, the Ethics Commission, the Board of Fire and Police Pension Commissioners, the Board of Administration of the Los Angeles City Employees' Retirement System, and the Board of Administration of the Water and Power Employees' Retirement System shall make client decisions in litigation exclusively

involving the policies and funds over which the Charter gives those boards control.

(d) **Interpretation of Section.** The City Attorney shall have the authority to make the determination regarding who is authorized to make client decisions on behalf of the City in accordance with the principles of this section and accepted principles of representation of municipal entities.

Sec. 273. Settlement of Litigation.

(a) **Boards.** The boards of the Proprietary Departments, the Ethics Commission, the Board of Fire and Police Pension Commissioners, the Board of Administration of the Los Angeles City Employees' Retirement System and the Board of Administration of the Water and Power Employees' Retirement System shall have the authority to approve or reject settlement of litigation exclusively involving the policies and funds over which the Charter gives those boards control. The settlement of all other litigation shall be in accordance with subsections (b) and (c) of this section.

(b) Settlements Involving Only Money Damages.

(1) The Mayor shall have authority to approve or reject settlements involving only the payment or receipt of money damages not exceeding an amount set by ordinance, and shall make client decisions with respect to settlement of such litigation. The Mayor may delegate this authority to the City Attorney.

(2) A claims board comprised of the Mayor as chair, the President of the Council and the City Attorney, or their designees, shall have the authority to approve or reject settlement of litigation involving only the payment or receipt of money damages exceeding the amount that is within the Mayor's authority under the preceding subsection, and below an amount set by ordinance. The claims board shall make client decisions with respect to settlement of such litigation.

(3) The Council shall have the authority to approve or reject settlement of litigation that involves only the payment or receipt of money damages exceeding the amount that is within the authority of the claims board under the preceding subsection, subject to veto of the Mayor, and Council override of the Mayor's veto by a two-thirds vote of the Council. The Council shall make client decisions with respect to settlement of such litigation. The claims board shall make recommendations to the Council concerning settlement of litigation within the scope of this subsection.

(c) **Other Settlements.** The Council shall have the authority to approve or reject settlement of litigation that does not involve only the payment or receipt of money, subject to veto of the Mayor, and Council override of the Mayor's veto by a two-thirds vote of the Council.

Sec. 274. Employment of Assistants.

The City Attorney may appoint assistants, deputies, clerks and other persons as the Council shall prescribe by ordinance. Each Assistant City Attorney must, at the time of appointment, be qualified to practice in all courts of the state and must have been so qualified for at least two years immediately preceding the appointment. Employment in the City Attorney's office shall be subject to Section 1050 of Article X of the Charter.

Sec. 275. Employment of Other Legal Counsel.

Upon recommendation of a board enumerated in Section 272(c), and the written consent of the City Attorney, the City may contract with attorneys outside of the City Attorney's Office to assist the City Attorney in providing legal services to that department. The City may otherwise contract with outside legal counsel to assist the City Attorney in the discharge of his or her duties under the Charter only upon written approval of the Council and the City Attorney, and consistent with budgetary appropriations.

CITY CLERK

Sec. 280. Appointment and Removal.

The City Clerk shall be appointed and removed by the Mayor, subject in both appointment and removal to confirmation by the Council.

Sec. 281. Powers and Duties.

(a) The City Clerk shall be the custodian of the City seal, the City ordinances, contracts, records, including a complete record of the real estate holdings of the City, and other City documents entrusted to the Clerk's care.

(b) The City Clerk shall keep all ordinances, contracts, records and documents properly indexed and, when not in actual use, open during regular office hours to public inspection.

(c) The City Clerk shall be present at each meeting of the Council and keep a record of its proceedings.

(d) The City Clerk shall administer all oaths and affirmations except as otherwise provided by the Charter.

(e) The City Clerk shall superintend elections as provided in the Charter.

(f) The City Clerk shall devote his or her entire time to the duties of the office.

(g) The City Clerk shall keep a record and have custody of all official bonds, and place and renew all corporate surety bonds of officers or employees provided that the reliability of corporate sureties has been approved by the Council.

OFFICE OF ADMINISTRATIVE AND RESEARCH SERVICES

Sec. 290. Appointment and Removal; Qualifications; Assistants.

The Director of the Office of Administrative and Research Services shall be appointed and removed as provided in Section 508. The Director shall have administrative and executive ability as demonstrated by five years experience at the executive or administrative level within ten years immediately preceding appointment to the position of Director. The Director may appoint and remove as many assistants as may be authorized by the Charter and ordinance.

Sec. 291. Powers and Duties.

The Director shall have the power and duty to:

(a) keep the Mayor and the Council advised of the condition, finances and future needs of the City, and make recommendations as are appropriate;

(b) assist in the preparation of the annual budget in accordance with policies prescribed by the Mayor;

(c) develop work programs and standards required in the proper planning of the budget;

(d) prepare reports on revenue and costs and, throughout the year, conduct studies and investigations that will assist in the preparation of the budget;

(e) assist the Council in the review of the proposed budget;

(f) assist the Mayor and Council in the consideration of any appropriations subsequent to the adoption of the budget, as set forth elsewhere in the Charter;

(g) plan and direct a system of budgetary administration to assure the proper and effective expenditure of funds;

(h) subject to the approval of the Mayor, prescribe rules and standards governing the matters under the jurisdiction of the Office of Administrative and Research Services with which all officers and departments of the City must comply;

(i) furnish the Mayor or Council aid, information or recommendation as requested in writing by the Mayor, the Council, or Council Committee; and

(j) perform other duties assigned to the office in the Charter.

Except as provided in Section 292, the powers and duties of the Director of the Office of Administrative and Research Services set forth in this section shall not apply to the Proprietary Departments.

Sec. 292. Administrative Management Research.

The Director of the Office of Administrative and Research Services shall conduct research in administrative management for the improvement of the organization, policies and practices of all appointed offices, departments and other agencies of City government, including, without limitation, the Proprietary Departments, for the purpose of evaluating programs and developing performance measures concerning the duties of the various positions, the methods and the standards of efficiency. The Director of the Office of Administrative and Research Services shall recommend to the Mayor, Council and the respective departments and agencies those changes that will promote economy and efficiency in the conduct of City government.

Sec. 293. Additional Responsibilities.

Notwithstanding Section 213, additional responsibilities related to management-employee relations or other responsibilities that are not the responsibility of other departments, offices and commissions may be assigned to the Office of Administrative and Research Services by ordinance. Responsibilities of other departments, offices and commissions may be transferred to the Office of Administrative and Research Services only pursuant to Section 514.

ARTICLE III
FINANCE, BUDGET AND CONTRACTS

OFFICE OF FINANCE

Sec. 300. Director of Finance; Powers and Duties of Office.

The chief administrative officer of the Office of Finance shall be the Director of Finance, who shall be appointed and removed as provided in Section 508. The Office of Finance shall have the power and duty to:

(a) develop and implement the City's revenue policy consistent with the Charter and ordinance, and develop guidelines for the collection of outstanding receivables;

(b) collect revenues and issue those licenses, permits and tax registration certificates not issued by the City officers or departments; and

(c) make recommendations to the Mayor and Council concerning the efficient organization of the revenue collection functions performed by City offices and departments.

Sec. 301. Treasury; Treasurer.

The official depository of the City shall be known as the City Treasury, which shall be under the direction and control of the Treasurer who shall be appointed and removed by the Mayor, subject in both appointment and removal to confirmation by the Council.

The Treasurer shall have the following powers and duties:

(a) The Treasurer shall be the custodian of all money deposited in the City Treasury. Money in the Treasury shall only be paid out upon the presentation of warrants or other forms of communication prescribed by the Controller, after demands for payment have been approved by the Controller in the manner provided elsewhere in the Charter or by ordinance, except that no warrants shall be required for payment of the principal and interest of bonds or other evidence of indebtedness payable by the City when due.

(b) When warrants presented to the Treasurer have all the signatures required by law, and are countersigned by the Controller, those signatures shall be *prima facie* evidence of the legality of the warrants. The Treasurer may, in the event of the authenticity of any warrant being questioned, fully investigate and satisfy himself or herself regarding the authenticity before paying.

(c) The Treasurer shall transmit to the Controller, at the end of each business day, a detailed statement showing the receipts and disbursements credited or debited to each fund or account.

(d) The Treasurer shall, at the end of each fiscal year, submit to the Mayor and Council a detailed statement of the receipts, disbursements and balances of the Treasury.

(e) The Treasurer shall be the custodian of all securities bought by the City. Upon sale of any bonds by the City, the Treasurer shall deliver the bonds, receive and credit the proceeds to the proper fund or accounts, and report the action to the Council.

(f) The Treasurer shall assist any officer of the City who is authorized by the Charter or ordinance to inspect the records and deposits in the Office of the Treasurer to make an inspection.

(g) The Treasurer shall perform those duties imposed upon City treasurers by any law of the state applicable to the City, and shall furnish a bond for the faithful performance of duties.

(h) The Treasurer shall assist the Controller and outside auditors as requested in the audits of the City's finances.

Sec. 302. Funds.

All money paid into the City Treasury shall be credited to and kept in separate funds in accordance with the provisions of the Charter, ordinance or other applicable law. In addition to funds established elsewhere in the Charter for departments controlling their own funds, the following funds are hereby established: General Fund, Reserve Fund, and bond funds, interest funds, sinking funds, trust funds and other funds as may be required by law or ordinance. For the purposes of the Charter, the General Fund is established as a medium of control of and accounting for municipal activities other than activities authorized or contemplated by special funds. All revenues and receipts which are not by law or Charter pledged or encumbered for special purposes shall be credited to the General Fund.

Sec. 303. Investments.

(a) The Treasurer may deposit the money held in the Treasury in the institutions and upon terms provided by law.

(b) Notwithstanding other provisions of the Charter, the boards of the Proprietary Departments, and of the Departments of Recreation and Parks and Library may grant to the Treasurer the authority to combine money in funds under their respective control with other City money for the purpose of investment. Earnings from the investment of the money of these departments shall be paid by the Treasurer to the department fund from which the money was derived in proportion to the share of the total investment supplied by that fund. The computation of the proportionate shares shall be by a method proposed by the Treasurer, subject to the approval of each of the above boards.

GENERAL BUDGET

Sec. 310. Fiscal Year.

The fiscal year of the City shall begin on July 1 of each year and shall end on June 30 of the following year.

Sec. 311. Budget Estimates to Mayor; Statement of Budget Priorities.

(a) At the time the Mayor prescribes, but not later than January 1 of each year, each board or officer at the head of any department or office, or other City governmental activity, other than those departments having control of their own funds, shall submit to the Mayor, with copies to the Council and the Director of the Office of Administrative and Research Services, on forms and in the manner prescribed by the Mayor, a detailed estimate of the money required for the next fiscal year for the proper operation of their departments and offices. These estimates shall contain uniform budget classifications and shall clearly set forth the functions performed and the items and services required for such performance. Summaries, schedules and supporting data shall be attached to the estimates. Any department head or officer requesting an increase over the prior year's appropriation shall indicate which classifications need the increase and rank the order of immediate need for each classification. After consultation with an officer or head of a department, the Mayor may refer the estimate back with instructions to prepare a revised estimate on the basis of a maximum sum for the department, office or activity, that maximum sum to be fixed by the Mayor, or with further

qualification as the Mayor shall determine. The officer or head of department shall present the revised estimate to the Mayor, with a duplicate to the Council and to the Director of the Office of Administrative and Research Services, at a date fixed by the Mayor.

(b) On or before February 1, the Mayor shall publish his or her budget priorities for the next fiscal year in order to facilitate public comment.

(c) On or before March 1 of each year the Controller shall submit to the Mayor, with a duplicate to the Council and to the Director of the Office of Administrative and Research Services, a detailed statement of the money that the Controller estimates will be required for the interest and sinking funds and for all outstanding bonded indebtedness and other lawful obligations of the City or of special districts and an estimate of the revenue to be derived from fines, licenses and other sources.

Sec. 312. Mayor's Proposed Budget.

On or before April 20 of each year, the Mayor shall submit to the Council a budget for the next ensuing fiscal year setting forth in summary and in detail:

(a) estimates of the expenditures and appropriations necessary for the support of the required work programs of the City government for the ensuing fiscal year, including interest and sinking funds or payments of principal on the bonded indebtedness of the City and of special districts;

(b) detailed estimates of the receipts of the City during the ensuing fiscal year, under laws existing at the time the budget is transmitted, and also under the revenue proposals, if any, contained in the budget;

(c) the expenditures and receipts of the City government during the last completed fiscal year;

(d) estimates of the expenditures and receipts of the City government during the fiscal year in progress;

(e) the amount of annual, permanent or other appropriations, including balances of appropriations for prior fiscal years, available for expenditure during the fiscal year in progress, as of June 30 of such year;

(f) balanced statements of:

(1) the condition of the Treasury at the end of the last completed fiscal year;

(2) the estimated condition of the Treasury at the end of the fiscal year in progress; and

(3) the estimated condition of the Treasury at the end of the ensuing fiscal year in case the financial proposals contained in the budget are adopted.

(g) all essential facts regarding the bonds, notes and other lawful obligations of the City;

(h) other financial statements and data necessary or desirable in order to make known in all practical detail the financial condition of the City government;

(i) an Unappropriated Balance, which shall be available for appropriations later in the ensuing fiscal year to meet contingencies as they arise; and

(j) a statement of resources of the Reserve Fund which shall be carried over to the next ensuing fiscal year to meet the cash requirements of the City for the portion of the next ensuing fiscal year prior to the receipt of taxes, or for appropriations to the Unappropriated Balance as provided in the Charter.

Sec. 313. Council Consideration of Budget.

After receiving the budget submitted by the Mayor, and prior to taking action on the budget, the Council shall hold a noticed public hearing. On or before June 1, the Council shall:

(a) approve the budget as submitted by the Mayor; or

(b) modify the budget by disapproving in whole or in part any items, or by increasing or decreasing any item, or by adding new items, and return the budget as modified by the Council to the Mayor. Any action taken by the Council under this section shall be taken by a majority vote of its members.

Upon failure of the Council to return the budget to the Mayor as provided in this section, the budget as submitted by the Mayor to the Council shall be signed by the City Clerk and thereupon become the general City budget for the ensuing fiscal year.

Sec. 314. Mayor's Veto.

The budget as adopted by the Council shall not be held for reconsideration but shall be promptly transmitted by the City Clerk to the Mayor upon whose approval and signature it shall become effective. If the Mayor shall fail to act upon the budget within five days, excluding Saturdays, Sundays and legal holidays, after its adoption by the Council, it shall be signed by the City Clerk and shall thereupon become effective. If the Mayor disapproves of any increase, decrease, omission or insertion of any item of the budget by the Council, the Mayor may veto, restore or otherwise change any item to the amount originally proposed by the Mayor or to any amount between that originally proposed by the Mayor and that adopted by the Council. The Mayor, however, shall have no power to change any description or limitation made applicable to an item by the Council, except to veto the change or to restore the description or limitation to the condition originally proposed by the Mayor. Upon completion of these changes, the Mayor shall within the five day period return the budget to the Council with a statement of action taken.

Sec. 315. Council Consideration of Mayor's Veto Message; Final Adopted Budget.

Upon receipt by the Council of the budget veto message from the Mayor, the Council shall have five days, excluding Saturdays, Sundays and legal holidays, within which to overcome the action of the Mayor relative to any item or items of the budget. Any item or items of the budget which shall have been vetoed, or otherwise changed by the Mayor, and which shall not be, by a two-thirds vote of all of the members of the Council, either readopted notwithstanding the objections of the Mayor or changed to an amount between that as originally adopted by the Council and that as changed by the Mayor, shall remain as modified by the Mayor.

Where the Mayor has changed any description or limitation applicable to an item, the Council, in its action pursuant to this section, shall have no power to alter the description or limitation other than to restore it to the condition in which it was originally adopted by the Council.

Upon the expiration of the Council's five day period, or sooner if the Council by majority vote so directs, the budget as returned by the Mayor, and to the extent modified thereafter by the Council, shall become the general City budget for the ensuing fiscal year and shall not be held for reconsideration but shall be

promptly transmitted to the City Clerk, signed by the City Clerk and filed in the office of the Controller.

EXPENDITURES

Sec. 320. Expenditure Programs.

Each office and department provided for in the general City budget, and the Departments of Library and Recreation and Parks to the extent that they are assisted by appropriations from the General Fund, shall have authority to expend, in the manner provided by law, the funds appropriated for its support during the ensuing fiscal year, but only in accordance with a program of planned expenditures which shall be prepared, filed and modified from time to time, as provided by law. No department, bureau, or office of the City government shall make expenditures or incur liabilities in excess of the amount appropriated therefor.

DEBT

Sec. 325. Debt Impact Statements.

Prior to the adoption of any ordinance or resolution authorizing the incurring of any indebtedness by the City or the placing of any debt authorization on the ballot, the Mayor and Council shall have prepared a debt impact statement. The debt impact statement shall analyze the effect of the new debt on the City's finances and indicate the amount of additional funds required to be budgeted for debt service.

TAXATION

Sec. 330. Use of County System of Assessment and Taxation.

Until otherwise provided by ordinance, the City shall continue to use, for purposes of municipal taxation, the county system of assessment and tax collection. Should the City resume the work of assessment and tax collection, the procedure shall be fixed by ordinance and, so far as applicable, shall be substantially the same as provided at the time by law for county taxes in the County of Los Angeles.

Sec. 331. Tax Levy.

Not earlier than the month of June, but not later than the last day of the month in which the statement of property valuations within the City as required by law is received, the Council shall adopt an ordinance levying upon the assessed valuation of the property in the City, in accordance with the provisions of law, a rate of taxation upon each one hundred dollars (\$100) of valuation, which, with the amounts, if any, transferred from the Reserve Fund in or for the current fiscal year subsequent to the adoption of the annual budget and the amount estimated to be received from fines, licenses and other sources of revenue, will be sufficient to raise the amount appropriated in the annual budget.

Sec. 332. Tax Levy – Alternate Method.

If the Council fails to levy a rate of taxation at the time and in the manner provided by the Charter, the Controller shall add to the budget the amount required to meet maturing portions of principal and interest on the bonded indebtedness of the City and of special districts in the City, and any special taxes lawfully imposed, and shall calculate a rate of taxation as provided in Section 331, not exceeding the limit provided by law. The Controller shall give public notice of the rate of taxation by publication in a newspaper of general circulation in the City or by other means provided by ordinance, and the tax rate calculated by

the Controller shall be the rate of taxation of the City. The Controller is hereby vested with all necessary legislative power to carry out the provisions of this section.

TRANSFERS

Sec. 340. Transfers Between Funds; Temporary Transfers.

(a) It shall not be lawful to transfer money from one fund to another or to use the money in one fund in payment of demands upon another fund, except in the case of the Unappropriated Balance and the Reserve Fund, or except as specifically provided in the Charter.

(b) Notwithstanding subsection (a), the Treasurer and the Controller, when authorized and directed by the Council by resolution, shall make temporary transfers, in accordance with procedures established by law, from the funds of the City as may be necessary to provide funds for meeting obligations of the City. The amount of any temporary transfers shall not at any one time exceed 85% of the *ad valorem* property taxes accruing to the City, shall not be made after the last Monday in April of the current fiscal year, and shall be replaced from the taxes accruing to the City before any other obligation of the City is met from those taxes.

Sec. 341. Transfers from Reserve Fund; Appropriations from Unappropriated Balance.

Transfers may be made from the Reserve Fund after adoption of the annual budget to meet in whole or in part any appropriated item of the annual budget, or may be made to the General Fund or the Unappropriated Balance. These transfers and any appropriations from the Unappropriated Balance may be made after adoption of the budget, as follows:

(a) upon recommendation of the Mayor, approved by a majority vote of the Council;

(b) upon a majority vote of the Council, subject to the approval of the Mayor, or passage by the Council over the Mayor's veto by a two-thirds vote.

If any order making a transfer or appropriation is not returned to the City Clerk by the Mayor for presentation to the Council, with objections in writing, within ten days after it has been presented, it shall become effective and be as valid as if the Mayor had approved and signed it.

Sec. 342. Transfers of Appropriated Funds.

Funds appropriated in the general City budget or thereafter by the Council for expenditure by any officer, board or department may be transferred to the Reserve Fund or the Unappropriated Balance, or appropriated for the same or other purposes by other authorized officers, boards or departments and the budget or other spending authority amended accordingly:

(a) for transfers not in excess of an amount established by ordinance, on the approval of the Mayor, provided that the Mayor shall give notice of such transfer at the time it is made to the City Clerk who shall notify the President of the Council, the Controller and the Director of the Office of Administrative and Research Services of the transfer;

(b) for transfers in excess of an amount established by ordinance, on the approval of the Mayor and a majority vote of the Council; or

(c) for transfers in excess of an amount established by ordinance, on the majority vote of the Council, subject to the

approval of the Mayor, or passage by the Council over the Mayor's veto by a two-thirds vote.

If any order making a transfer is not returned to the City Clerk by the Mayor, for presentation to the Council, with objections in writing, within ten days after it has been presented, it shall become effective and be as valid as if the Mayor had approved and signed it.

Sec. 343. Intra-Departmental Transfer.

(a) **Departments Not Controlling Their Own Funds.** The head of any department not having control of its own funds may make application in writing to the Mayor for a transfer of amounts from one appropriated item to another in the budget allowance of the department or to a new item created after adoption of the annual budget. On the approval of the Mayor, the Controller shall make the transfer, but no transfer of an amount exceeding either thirty-five thousand dollars (\$35,000) or other amount established by ordinance shall be made unless approved by a majority vote of the Council. Notwithstanding the above, for transfers within the Council's budget, the President of the Council shall be authorized to approve transfers.

(b) **Departments Controlling Their Own Funds.** The general manager of any department having control of its own funds may make application in writing to the board having control and management over the department for a transfer of amounts from one budget item to another in the annual budget of the department, or to a new item created after adoption of the annual budget. On the approval of the board, the Controller shall make the transfer, but no transfer of an amount exceeding thirty-five thousand dollars (\$35,000) or other amount established by ordinance shall be made unless approved in writing by the Mayor.

(c) **Increase in Limit.** The monetary limitations of thirty-five thousand dollars (\$35,000) in subsections (a) and (b) above shall commence at the beginning of the City's 1999-2000 fiscal year and shall be subject in subsequent fiscal years to an annual adjustment at the beginning of the fiscal year based upon the Consumer Price Index for all urban consumers for the Los Angeles area published by the United States Department of Labor, Bureau of Labor Statistics.

(d) **Notice.** At the time any transfer of funds pursuant to this section is made, the authority approving the transfer shall give notice to the City Clerk, who shall notify the President of the Council, the Controller and the Director of the Office of Administrative and Research Services of the transfer.

Sec. 344. Transfer of Surplus to Reserve Fund.

At the close of each fiscal year, the Controller and Treasurer shall transfer all surplus money remaining in each fund over and above the amount of outstanding demands and liabilities payable out of the fund to the Reserve Fund, except surplus money in the several bond funds, interest and sinking funds, trust funds, pension and retirement funds, Harbor Revenue Fund, Library Fund, Recreation and Parks Fund, Power Revenue Fund, Water Revenue Fund, Airport Revenue Fund and other funds as provided by the Charter or ordinance. The Council may, by ordinance, direct that surplus money in the Harbor Revenue Fund, the Power Revenue Fund or the Water Revenue Fund be transferred to the Reserve Fund with the consent of the board in charge of the fund, but not otherwise. Surplus money may be transferred from the Airport Revenue Fund only as provided in Section 635.

CLAIMS

Sec. 350. Claims Against City.

(a) **Claim Required.** No suit shall be brought on any claim for money or damages against the City, or any officer or board of the City, until a claim has been filed with the City Clerk, and rejected in whole or in part. If rejected in part, suit may be brought to recover the whole. Claim procedures and requirements shall be governed by state law or ordinance not inconsistent with state law. Except in those cases where a shorter period of time is otherwise provided by state law, all claims for damages against the City must be presented within six months for personal injury and within one year for property damage after the occurrence from which the damages arose, or after the last item of the account or claim accrued.

(b) **Action on Claim.** In all cases, the claim shall be approved or rejected in writing and the date given. Failure to act upon any claim within 45 days from the date the claim is filed with the City Clerk or, if amended, within 45 days after the amended claim is filed with the City Clerk, or within any greater period provided by state law, shall be deemed to be a rejection.

(c) **Applicability.** The requirements of this section shall not apply to claims for payment upon presentation and surrender of any bonds, notes or other evidences of indebtedness authorized by the Charter or state law and payable solely from any revenue fund or other special fund.

MISCELLANEOUS FINANCE

Sec. 360. Payment into Treasury.

Except as provided by ordinance, all public money collected by any officer, employee of the City or other person shall immediately be paid into the City Treasury, without any deduction on account of any claim for fees, commissions or any other cause.

Sec. 361. Law Governing Bonded Indebtedness.

Except for revenue bonds issued pursuant to Section 609 or related ordinance or other bonded indebtedness issued pursuant to other procedural ordinance, the laws of the State of California establishing the procedure for the creation of bonded indebtedness in force at the time any bonded indebtedness is created by the City shall, so far as applicable, be followed.

Sec. 362. Annual Audit.

At the end of each fiscal year, the Council shall require the income and expenditures of each department and office of the City to be audited by one or more certified public accountants, who are not connected with the department to be audited. The accountants shall make their report directly to the Council and send copies to the Mayor and Controller. The Council shall determine the extent of the audit as to each of the departments, and may provide for the taking of the audit by resolution.

CONTRACTS

Sec. 370. Contracts Required to be in Writing and Signed.

Every contract involving consideration reasonably valued at more than an amount specified by ordinance shall, except in cases of urgent necessity for the preservation of life, health or property as provided in Section 371(e)(5), be made in writing, or other manner as provided by ordinance. The draft of the contract shall be approved by the board, officer or employee authorized to make

the contract. Every contract must be approved by the City Attorney as to form, except for contracts or classes of contracts involving consideration reasonably valued at less than an amount set by ordinance.

The contract shall be signed on behalf of the City by:

- (a) the Mayor; or
- (b) the board, officer or employee authorized to enter into the contract; or
- (c) in the case of a contract authorized by Council, the person authorized by the Council.

The City shall not be, and is not, bound by any contract unless it complies with the requirements of this section and all other applicable requirements of the Charter.

Sec. 371. Competitive Bidding; Competitive Sealed Proposals.

(a) **Competitive Bidding.** Except as provided in subsection (e) below, the City shall not be, and is not, bound by any contract unless the officer, board or employee authorized to contract has complied with the procedure for competitive bidding or submission of proposals established by this section and ordinance.

Contracts shall be let to the lowest responsive and responsible bidder furnishing satisfactory security for performance. This determination may be made on the basis of the lowest ultimate cost of the items in place and use. Where the items are to constitute a part of a larger project or undertaking, consideration may be given to the effect on the aggregate ultimate cost of the project or undertaking. Notwithstanding the provision of this subsection requiring award to the lowest responsive and responsible bidder, a bid preference can be allowed in the letting of contracts for California or Los Angeles County firms, and the bid specifications can provide for a domestic content and recycled content requirement. The extent and nature of the bid preference, domestic content and recycled content requirement and any standards, definitions and policies for their implementation shall be provided by ordinance.

(b) **Competitive Sealed Proposals.** As an alternative to an award pursuant to open and competitive bidding, a contract can be let pursuant to a competitive sealed proposal method, in accordance with criteria established by ordinance adopted by at least a two-thirds vote of the Council. The competitive sealed bid proposal system may permit negotiations after proposals have been opened to allow clarification and changes in the proposal. Adequate precautions shall be taken to treat each proposer fairly. No award may be made pursuant to this alternative method to a proposer whose final proposal is higher as to the ultimate cost to the City, as above defined, than any other responsive proposal submitted. The contracting authority, in order to utilize this alternative method, must make a written finding supported by a written statement of facts that adherence to the rule that the award be made to the lowest responsive and responsible bidder is not practicable or advantageous and shall also state in writing the reason for the particular award.

Consistent with competitive bidding requirements, design-build or other appropriate project delivery systems may be used when justified by the type of project and approved by the contracting authority.

(c) **Right to Reject.** The City shall reserve the right to reject any and all bids or proposals and to waive any informality in the

bid or proposal when to do so would be to the advantage of the City. The City may also reject the bid or proposal of any bidder or proposer who has previously failed to timely and satisfactorily perform any contract with the City.

(d) **Notice.** The Council, board, officer or employee authorized to contract shall cause notice inviting bids or proposals to be published at least once in a daily newspaper circulated in the City, or to be given by other method prescribed by ordinance, inviting bids or proposals. All bids and proposals shall comply with additional requirements provided by ordinance, including, but not limited to, the furnishing of a bid bond, performance bond and affidavit of non-collusion. Further procedures for competitive bidding shall be prescribed by ordinance.

(e) **Exceptions.** The restrictions of this section shall not apply to:

- (1) Contracts involving consideration reasonably valued at less than an amount specified by ordinance.
- (2) Contracts, as determined by the contracting authority, for the performance of professional, scientific, expert, technical, or other special services of a temporary and occasional character for which the contracting authority finds that competitive bidding is not practicable or advantageous.
- (3) Contracts for the furnishing of articles covered by letters patent granted by the government of the United States.
- (4) Contracts for leasing as lessee or purchasing real property when approved by majority vote of the Council.
- (5) Contracts for repairs, alterations, work or improvements declared in writing by the contracting officer or board, or its designee, to be of urgent necessity for the preservation of life, health or property. The declaration shall give the reasons for the urgent necessity and must be approved by the Council or its designee. Approval may be conditioned upon compliance with one or more of the requirements of this section.
- (6) Contracts entered into during time of war or national, state or local emergency declared in accordance with federal, state or local law, where the Council, by resolution adopted by two-thirds vote and approved by the Mayor, suspends any or all of the restrictions of this section or their applicability to specific boards, officers or employees.
- (7) Contracts for equipment repairs or parts obtained from the manufacturer of the equipment or its exclusive agent.
- (8) Contracts for cooperative arrangement with other governmental agencies for the utilization of the purchasing contracts and professional, scientific, expert or technical services contracts of those agencies and any implementing agreements, even though the contracts and implementing agreements were not entered into through a competitive bid process.
- (9) New, long-term concession agreements with the existing merchants as of the Adoption Date of the Charter on Olvera Street negotiated by the City department responsible for administering the El Pueblo de Los Angeles Historical Monument.
- (10) Subject to the requirements of Section 1022, contracts (including without limitation those, as determined by the contracting authority, for the performance of professional, scientific, expert, technical or other special services),

where the contracting authority finds that the use of competitive bidding would be undesirable, impractical or impossible or where the common law otherwise excuses compliance with competitive bidding requirements.

Sec. 372. Competitive Proposals Preferred.

Except as otherwise provided by ordinance, in all cases where bids are not required by the Charter, competitive proposals or bids shall be obtained as far as reasonably practicable and compatible with the City's interests. In all cases, a public record of these proposals and agreements shall be kept. The right to reject any and all proposals or bids shall be reserved in all cases.

Sec. 373. Long Term Contracts; Approval by Council.

Except as otherwise provided in the Charter, no board, officer or employee shall make any type of contract, as specified by ordinance, obligating the City or any department to make or receive payments of money or other valuable consideration for a period longer than such period as provided by ordinance, unless such contract shall have been first approved by the Council. The ordinance shall set a time period for review by the Council, and may further define what constitutes a term of more than the specified period. If the Council does not approve the contract, the Council shall not modify the contract, but shall return it to the contracting authority for reconsideration and resubmission to Council. This section shall not apply to contracts entered into with the United States government, or other governmental agencies, or as specifically authorized in Sections 605 through 607.

Sec. 374. Contract or Direct Employment.

Whenever any board, officer or employee is given authority in the Charter to construct any public work or improvement, that authority shall include the right to proceed either by contract or by the direct employment of labor and purchase of materials, in accordance with the Charter.

Sec. 375. Prequalification of Bidders.

Nothing in this Article shall prevent the prequalification of bidders in accordance with criteria provided by ordinance if the process is clearly described in the bid specifications or request for proposals, and the contracting authority makes a written finding that utilization of such process would benefit the City.

Sec. 376. Change Orders.

Upon the award of any contract, the contracting authority may delegate the approval of change orders to a department employee, but that delegation shall specify the dollar amount that can be approved without further authorization by the contracting authority.

Sec. 377. Prevailing Wage.

The provisions of California Labor Code Section 1770 et. seq. regarding prevailing wages on public works and related regulations, as now existing and as may be amended, are accepted and made applicable to the City, its departments, boards, officers, agents and employees.

Sec. 378. Living Wage.

The City shall require that a living wage be provided to the employees of those doing business with the City in a manner to be prescribed by ordinance.

PURCHASES

Sec. 380. Purchases.

The City shall prescribe by ordinance the process for purchases of materials and supplies, equipment and equipment rental, repair and maintenance, consistent with the requirements of the Charter.

SALES

Sec. 385. Sale of City Property.

Any real or personal property owned by the City that is no longer needed may, subject to the limitations elsewhere prescribed in the Charter, be sold under terms and conditions prescribed by ordinance. However, any real or personal property under the control of any board authorized by the Charter or by law to acquire, hold or control the property shall not be sold without the approval of the board or officer having the management of the department. Except as otherwise provided by law, the proceeds of the sale shall be paid into the City Treasury and placed in the fund of the department having control of the property.

FRANCHISES

Sec. 390. Franchises.

(a) **Granting of Franchises.** The City may grant franchises for fixed terms, permits or privileges (Franchises) for the construction and operation of plants or works necessary or convenient for furnishing the City and its inhabitants with transportation, communication, terminal facilities, water, light, heat, power, refrigeration, storage, or any other public utility or service (Public Utility Service). The Council may prescribe the terms and conditions of the grant, and shall prescribe by ordinance the procedure for making these grants, subject to the limitations provided in the Charter and applicable law.

(b) **Award of Franchise.** Before granting any Franchise, the Council shall advertise its intention to grant the Franchise and shall award the Franchise to the highest responsible and responsive bidder after competitive bidding, in accordance with the procedures prescribed by ordinance governing the granting of Franchises.

(c) **Term of Franchises.** No Franchise for the construction and operation of plants or works necessary or convenient for the furnishing of the City and its inhabitants with Public Utility Service shall be made for a period exceeding 21 years, except Franchises for the construction and operation of subways, elevated railways and grade separated railways, which shall be granted for a period not exceeding 40 years for the original Franchise. No grant for the extension of facilities of an existing utility operating under a Franchise granted by the City or county shall be made for a period beyond the expiration date of the Franchise under which the utility, or the portion of the utility with which the extension is to be connected, is operated.

The City may, by ordinance, five years or less prior to the expiration of any Franchise, grant to the holder of the Franchise a new Franchise to replace the expiring Franchise. The term of the replacement Franchise shall not exceed ten years from the date of expiration of the Franchise it replaces, except that any replacement cable television Franchise may be granted for a period not to exceed 15 years. Each replacement Franchise shall comply with the ordinances governing the granting of Franchises

in force at the time the replacement Franchise is granted, and shall carry all the conditions required in the original Franchise.

(d) **Terms and Conditions of Franchises.**

- (1) *Power to Order Extensions of Facilities.* Every Franchise shall provide that the board designated by ordinance to have such authority shall have the power to order extensions of the facilities authorized in the Franchise, after a hearing as provided by ordinance.
- (2) *Right to Purchase.* Except as otherwise provided in the Charter, every Franchise shall reserve to the City the right to purchase the property of the Public Utility Service, or find a purchaser therefor, upon one year's written notice, either at an agreed price or a price to be determined in a manner prescribed in the grant.
- (3) *Price for Purchase.* In fixing in any Franchise the price to be paid by the City for any utility, no allowance shall be made for Franchise value, good will, going concern, earning power, increased cost of reproduction, severance damage or increased value of right of way.
- (4) *Assumption of Bonds.* Every Franchise shall provide that when purchasing the property of the grantee, the City, if and when permitted by the California Constitution, may assume the obligations of the grantee for the payment of the bonds then outstanding against the property, not exceeding in aggregate par value the valuation of the

property purchased, as determined in accordance with this section. In this case, the par value of the bonds shall be deducted from the valuation of the property, and the excess, if any, of the valuation of the property over the par value of the bonds assumed shall be the net purchase price to be paid to the grantee.

- (5) *Consolidated or Annexed Territory.* Every Franchise shall provide that in case of consolidation with or annexation to the City of any territory not now included in the City, any Franchise to operate the Public Utility Service or any part thereof, held or claimed by the holder of the Franchise in or for any portion of territory consolidated or annexed to the City shall automatically be surrendered to the City, and the rights and obligations of the Franchise shall automatically extend to the additional territory.

(e) **Resettlement Franchises.** A resettlement Franchise may be granted to a public utility operating in the City under more than one Franchise issued for different periods, and for different expiration dates for different parts of its system, which resettlement Franchise shall be in lieu of all other Franchises held by the grantee within the City.

(f) **Applicability.** Nothing in this section shall apply to the granting of Franchises by the Departments of Harbor and Airports.

ARTICLE IV ELECTIONS

GENERAL PROVISIONS RELATING TO ELECTIONS

Sec. 400. Types of Elections.

Municipal elections held in the City of Los Angeles shall be classified as primary nominating elections, general municipal elections and special elections.

Sec. 401. Election Days – City of Los Angeles and Board of Education.

For City offices and elections of the Board of Education, primary nominating elections shall be held on the second Tuesday in April in every odd-numbered year, and general municipal elections shall be held on the first Tuesday after the first Monday in June in every odd-numbered year. However, if holding the election on that day would conflict with a significant event or occurrence, and the Council finds that holding the election on that day would substantially reduce voter participation, the Council may set the election on a specific alternate day not earlier than the previous Tuesday nor later than the subsequent Tuesday from the regularly scheduled election day. The Council may set the alternate day only if it finds that holding the election on such alternate day would not substantially reduce voter participation. Any action setting an alternate election day must be adopted by the Council by resolution no later than six months before the date on which the affected election would otherwise take place.

Sec. 402. Ordinance Ordering the Holding of an Election.

The Council shall, by ordinance, order the holding of all elections. The ordinance ordering the election shall specify the object and time of holding the election, shall establish election precincts, designate polling places, and name officers of election for each precinct. That ordinance may do so by making reference to other enactments or documents. Any ordinance ordering the holding of an election may also order the holding of a run-off election, to be held if necessary.

Sec. 403. Officers of Election.

Officers of election shall be registered voters of the City, or of the School District in the case of Board of Education elections, and shall be selected and appointed in accordance with procedures set forth in the City Election Code. No candidate who has taken out papers for nomination, nor a member of his or her immediate family, shall be permitted to act as an election officer, nor shall the polling place be held in his or her residence.

Sec. 404. Returns of Election.

The returns of every election shall be delivered to the City Clerk, who shall, within 14 days after any election, canvass the returns and certify them to the Council, who shall declare the result and order the issuance of certificates of nomination or election as appropriate. The Council shall be the judge of the qualifications of all of the elected officers. When any municipal election is consolidated with any state or county election, after the Board of Supervisors or Registrar of Voters of Los Angeles County has canvassed the returns and certified the result of the canvass of all municipal questions submitted at the election to the Council, the Council shall declare the result. Any act in relation to the conduct of the election required by the Charter to be performed by an officer or employee of the City may be performed by the proper officer or employee of the county.

Sec. 405. Employment of Additional Persons.

Whenever requested by the City Clerk, the Council shall authorize the Clerk to employ those persons, in addition to the persons regularly employed in the Clerk's office, as may be necessary to assist in the performance of any duty imposed upon the Clerk in connection with the conduct of any election. The provisions of the Charter respecting the classified civil service of the City shall not apply to the persons so specially employed.

Sec. 406. Recounts.

(a) **Applicability.** This section governs recounts of all primary nominating, general municipal, and special elections of the City of Los Angeles and any elections of other jurisdictions consolidated with those elections. Nothing in this section shall be construed to prevent any person from contesting the results of any election by judicial proceedings authorized by law.

(b) **Procedure.** Within five days after the Council's declaration of the results of an election, any registered voter of the City, or of the School District in the case of Board of Education elections, may file with the City Clerk a written request to recount all of the votes cast at that election for candidates for any office, or for and against any measure. The request shall comply with the requirements of the City Election Code. The recount shall be conducted publicly and shall commence not more than seven calendar days after the City Clerk's acceptance of the recount request. No person who is an interested party to the recount shall be involved in the recount. The recount shall otherwise be conducted in accordance with procedures set forth in the City Election Code.

(c) **Results of Recount.** Upon completion of the recount, the Council shall declare the result. If any person who had not been declared nominated or elected is found upon the recount to be entitled to nomination or election, the Council shall so declare and direct that the proper certificate of nomination or election be issued to that person. If by the recount it is determined that the result of a ballot measure election is different than as already declared, the Council shall so declare.

(d) **Costs of Recount.** Any request for recount shall be accompanied by a bond or cash deposit in a sum specified by ordinance, in a form satisfactory to the City Clerk. The bond or deposit shall be payable to the City of Los Angeles in the event that the recount does not change the result of the election. If the result of an election is changed by the recount, the expense of the recount shall be borne by the City, and the bond or cash deposit shall be returned to the elector who requested the recount. The results of an election are considered changed if the identity of any person who had been declared nominated or elected is changed, or if the approval or disapproval of any ballot measure is changed.

Sec. 407. Eligibility for Office.

(a) **Election.** To be eligible for nomination or election to any office under the Charter, a person must be a registered voter of the City or of the School District in the case of candidates for the Board of Education, at the time of his or her nomination and election, and have been a resident of the City, in the case of candidates for Mayor, Controller, or City Attorney, or of the Council district or Board district from which he or she is nominated or elected in the case of candidates for City Council

and Board of Education, for at least 30 days immediately preceding the first day upon which candidates could file a Declaration of Intention to run for office at that election. When an election is to be held to fill a vacancy in an elected office and the Charter does not require the filing of a Declaration of Intention to run for that office, the 30 day residency requirement shall be measured from and precede the first day upon which candidates are permitted to secure Nominating Petitions for that office from the City Clerk.

(b) **Appointment.** The eligibility requirements of subsection (a) shall also apply to persons appointed to fill a vacancy in an elected office; however, the 30 day residency requirement shall be measured from and precede the date of appointment.

(c) **Disqualification.** No person shall be eligible to file a Declaration of Intention to run for City office or for election or appointment to any elected City office, who, within the prior five years:

- (1) was convicted of a felony or entered a plea of guilty or no contest to a felony charge; or
- (2) was convicted of a violation of the conflict of interest or governmental ethics provisions of the Charter, City ordinances, or state or federal law, unless the court at the time of sentencing specifically determines that this provision shall not apply.

(d) Any person disqualified under these provisions from seeking election or appointment to an elected City office shall likewise be ineligible for the same period of time to hold any appointed position in the City government.

Sec. 408. Eligibility to Vote.

To be eligible to vote at any of the elections held under the Charter, a person must be registered in the manner and have the qualifications required by the general laws of this state respecting the registration and qualification of voters for state and county elections.

Sec. 409. Filling Vacancies in the Offices of Mayor, City Attorney, Controller and Member of the City Council.

Vacancies in the offices of Mayor, City Attorney, Controller and members of the City Council shall be filled by either appointment or election in the manner set forth in this section.

(a) **Appointment.** The Council may fill a vacancy by appointing a person to hold the office for the portion of the unexpired term remaining through the next June 30 of an odd-numbered year. If any portion of the term remains after that date, the Council shall also call a special election or elections to fill the remainder of the term, and shall consolidate the election with the primary nominating election and general municipal election next following the appointment. If a vacancy is filled by appointment after the first date fixed by law for filing a Declaration of Intention to become a candidate at the next primary nominating election, the person appointed shall hold the office for the remainder of the unexpired term.

(b) **Special Election.** Instead of filling a vacancy by appointment, the Council may call a special election, and special runoff election, if necessary, by ordinance for the purpose of filling the vacancy for the remainder of the unexpired term. The Council shall provide in the ordinance for the consolidation of the election with any other election and for the procedure for nominating candidates, including the amount of the filing fee, if

any, to be paid by candidates and other matters pertaining to the election. In the case of a tie vote, the Council shall decide which candidate receiving an equal number of votes is elected to fill the vacancy.

(c) **Recall.** Any person appointed or elected to fill a vacancy may be removed from office by the recall in the same manner as if he or she had been elected to office.

Sec. 410. Filling Vacancies in the Office of Members of the Board of Education.

Vacancies in the office of Members of the Board of Education shall be filled by either appointment or election in the manner set forth in this section.

(a) **Appointment.** The Board of Education may fill a vacancy by appointing a person to hold the office for the portion of the unexpired term remaining through the next June 30 of an odd-numbered year. If any portion of the term remains after that date, the Board shall also contract with the City of Los Angeles for the calling and conducting of a special election or elections to fill the remainder of the term, and the Council shall consolidate the election with the primary nominating election and general municipal election next following the appointment. If a vacancy is filled by appointment after the first date fixed by law for filing a Declaration of Intention to become a candidate at the next primary nominating election, the person appointed shall hold the office for the remainder of the unexpired term.

(b) **Special Election.** Instead of filling a vacancy by appointment, the Board of Education may contract with the City of Los Angeles for the calling and conducting of a special election or elections for the purpose of filling the vacancy for the remainder of the unexpired term. The contract shall be subject to approval by the City Council, and shall contain a provision that the Los Angeles Unified School District shall pay for all costs incurred in conducting the special election or elections. Unless otherwise specified in the contract, within 30 days of the Council's approval of the contract, the Council shall adopt a resolution calling a special election, and special runoff election, if necessary, for the purpose of filling the vacancy and provide in that ordinance the time for holding the election, whether consolidation with any other scheduled election will be sought; the procedures for nominating candidates, including the amount of the filing fee, if any, to be paid by candidates; and other matters pertaining to the election.

(c) **Recall.** Any person appointed or elected to fill a vacancy may be removed from office by the recall in the same manner as if he or she had otherwise been elected to office.

Sec. 411. Substantial Compliance with Election Requirements.

Substantial compliance with the provisions of this Article shall be sufficient for the holding of any election, and for the approval or rejection of any ordinance, order or resolution submitted to a vote of the electors of the City.

Sec. 412. City Election Code; Amendments.

All elections, unless otherwise provided in the Charter, shall be conducted and held in accordance with the provisions of the City Election Code. No amendment to the City Election Code shall affect any election, petition, or other election-related proceeding occurring within six months following the publication of the ordinance effecting the amendment.

PRIMARY NOMINATING AND GENERAL MUNICIPAL ELECTIONS

Sec. 420. Candidate's Filing Fee.

The Council may by ordinance provide for a filing fee to be paid to the City Clerk by each candidate for elected office, provided that the ordinance also allows the requirement to be satisfied by a substitute means other than fee payment.

Sec. 421. Declaration of Intention.

(a) **Form and Timing.** Each candidate for nomination to any elected office shall sign and file with the City Clerk a sworn Declaration of Intention to become a candidate for the office designated in the Declaration. The Declaration of Intention must be made on a form furnished by the City Clerk, and shall include an affidavit by the candidate that he or she possesses all necessary legal qualifications to be a candidate for the designated office. The Declaration of Intention shall be filed not earlier than 90 days, nor later than 85 days prior to the primary nominating election.

(b) **Restrictions; Withdrawal.** A candidate may not file a Declaration of Intention to become a candidate for more than one office at the same primary nominating election. Prior to the issuance of a Nominating Petition, a candidate may withdraw the Declaration of Intention to become a candidate for the office designated therein by filing a written statement with the City Clerk. In that case, a candidate may file a new Declaration of Intention to become a candidate for another office not later than 85 days prior to the primary nominating election.

(c) **Statement of Economic Interests.** Each candidate for Mayor, City Attorney, Controller and member of the City Council shall file a Statement of Economic Interests that itemizes investments, interests in real property and income, except for gifts, received in the previous 12 month period. The Statement shall be filed with the City Ethics Commission no later than the final filing date for filing the Declaration of Intention. A Declaration of Intention shall not be valid unless a Statement of Economic Interests has been submitted by the final filing date for the Declaration of Intention.

Sec. 422. Nominating Petition.

(a) **Form and Requirements.** The City Clerk shall prepare and furnish a Nominating Petition to each candidate who has filed a valid Declaration of Intention. The Nominating Petition shall specify the name of the office and the name of the candidate to be nominated, and shall otherwise comply with the requirements of the City Election Code. In order to qualify a candidate for placement on the primary nominating ballot, the Nominating Petition shall be signed by at least 500 registered voters of the City, in the case of nomination to an office elected at large, or of the Council district or Board district in the case of nomination to the City Council or Board of Education. Only signatures of registered voters living within the Council district or Board district, as the case may be, shall be counted in determining the sufficiency of those petitions. Voters may sign more than one petition for a candidate for the same office. A petition presented to the City Clerk shall not be valid if it contains blanks for more than one thousand signatures.

(b) **Filing and Certification.** Nominating Petitions shall be filed with the City Clerk not more than 80 days and not less than 65 days prior to the primary nominating election. No Nominating

Petition shall be filed with the City Clerk until any filing fee requirement has been satisfied. The City Clerk shall examine the Nominating Petition, and determine whether it contains the requisite number of signatures of qualified registered voters, in accordance with procedures contained in the City Election Code. When the City Clerk has completed the examination of the petition, the Clerk shall prepare a dated certificate showing the result of the examination.

(c) **Supplementing the Petition.** The City Election Code shall govern the process by which and circumstances under which an insufficient Nominating Petition may be supplemented. However, no supplement to a Petition shall be allowed after the expiration of the time for filing the Nominating Petition set forth in the Charter, and no signature may be withdrawn from a Nominating Petition after its presentation to the Clerk.

Sec. 423. Withdrawal of Nominating Petition.

Within three days after the expiration of the time for filing a Nominating Petition, any person for the nomination of whom a petition has been filed, may cause his or her name to be withdrawn from nomination by filing a request in writing with the City Clerk. No name so withdrawn shall be printed on the primary nominating election ballot. If after a withdrawal, or by the death or other disqualification of any person for the nomination of whom a petition has been filed, only one candidate remains for any given office, then other nominations for that office may be made by filing petitions within ten days after the expiration of the time for the filing of Nominating Petitions, but no supplement to any Petition shall be allowed.

Sec. 424. Primary Nominating Election Ballot.

(a) **Order of Placement.** The names of candidates who have qualified for placement on the ballot, except candidates who have withdrawn or died or otherwise been disqualified, together with any measures or propositions as ordered by the Council or otherwise required by law, shall appear on the ballot. The offices to be filled shall be arranged on the ballot as follows: Mayor, City Attorney, Controller, member of the Council, member of the Board of Education, followed by any other offices to be filled in the order determined by the Council. Measures and propositions shall appear on the ballot in the order determined by the Council.

(b) **Nonpartisan Ballot.** There shall be nothing on any ballot indicative of the party affiliation, source of candidacy or support of any candidate.

(c) **Write-in Candidates.** Each ballot shall provide an opportunity for voters to write-in, for each office on the ballot, the name of any person whose name does not appear on the ballot and for whom the voter wishes to vote.

Sec. 425. Results of Primary Nominating Election.

(a) In the event that any candidate receives a majority of the votes cast for an office at the primary nominating election, that candidate shall be elected to the office.

(b) In the event no candidate receives a majority of the votes cast for an office, the two candidates receiving the highest number of votes for the office shall be the candidates, and the only candidates, for that office whose names shall appear on the ballots to be used at the general municipal election.

(c) In the event that two or more persons receive an equal number of votes as candidates for an office at the primary nominating election, so that the result of the election does not

determine which of the persons are entitled to be nominated as candidates, the Council shall draw lots to determine which of the persons shall be the candidate or candidates for the office. The lots shall be drawn at the next regular Council meeting occurring later than five days after the declaration of the result of the election, in the manner the Council prescribes. However, if a recount of the ballots with respect to the office in question is timely requested, lots shall not be drawn until and unless the recount also fails to result in a determination of which persons are entitled to be nominated as candidates for the office.

Sec. 426. General Election Ballot.

The ballot for any general election shall be in the same general form as for the primary nominating election, so far as applicable, and without any indication as to the party affiliation, source of candidacy or support of any candidate.

Sec. 427. Death or Disqualification of Candidate.

In the event of the death, resignation or other disqualification of any candidate nominated at a primary nominating election, the person who received the next highest number of votes for that office at the primary nominating election shall be deemed a candidate and, if practicable, his or her name shall be printed on the ballot to be used at the general municipal election.

RECALL

Sec. 430. Subject of Recall.

Any incumbent of an elected office, whether elected by vote of the people or appointed to fill a vacancy, may be removed from office by the registered voters of the City of Los Angeles, or the registered voters of the School District in the case of removal of a member of the Board of Education. The removal of the incumbent shall be known as the recall.

Sec. 431. Recall Petition.

A recall petition shall comply with the provisions of the Charter and the City Election Code. The following shall apply to all recall petitions:

(a) To qualify for presentation to the City Council, a recall petition shall be signed by registered voters equal in number to at least 15% of the registered voters eligible to vote for the office, the incumbent of which is sought to be removed. The 15% shall be computed upon the number of registered voters on the date of filing with the City Clerk of the Notice of Intention to circulate the petition described in subsection (b) of this section. If the recall petition concerns removal of a member of Council, or member of the Board of Education, the 15% shall be computed upon the total number of registered voters within the Council district or Board district from which the Council member, or member of the Board of Education was elected. Only signatures of registered voters living within the Council district or Board district, as the case may be, shall be counted in computing the 15%, and only voters residing within the district shall be entitled to vote at the election. All names signed to a petition must have been secured within the time period described in subsection (d), and any signature affixed outside of this time period shall not be counted in determining the sufficiency of the petition.

(b) Before submitting a recall petition for signatures, its proponents shall publish a Notice of Intention and a Statement of Reasons (Statement) for the proposed recall. No such notice shall be effective if published: (1) before the officer has held his or her

current term of office for three months, or (2) within six months of the expiration of the current term of office, or (3) within six months after a recall election at which the officer was retained in office. The Statement shall be served on the officer to be recalled and on the City Clerk, and shall otherwise comply with requirements of the City Election Code. The sufficiency of the Statement shall not be subject to review by the Council; however, the petition, when circulated, shall have attached to it an affidavit of one or more of the proponents that all of the facts contained in the Statement are true.

(c) The officer whose recall is sought, or anyone acting upon his or her behalf, may publish an Answer to the Statement (Answer) in accordance with the requirements of the City Election Code. If an Answer is published, it shall be served on the proponent of the recall and on the City Clerk, and shall otherwise comply with requirements of the City Election Code. The Statement and Answer are intended solely for the information of the voters and no insufficiency in their form or substance shall affect in any manner the validity of the proceedings taken under the Charter.

(d) Within the time after the publication and service of the Statement as provided in the City Election Code, the petition demanding the recall of the officer may be circulated for signatures. The petition shall contain a copy of the Statement and any Answer, and shall otherwise be in a form prescribed by the City Election Code. Signatures shall be secured and the petition filed within 120 days from the first day to circulate.

(e) Except as otherwise provided, the provisions of this Article relating to the form and to the mode of signing initiative petitions, and to the filing, examining, certifying, supplementing, presenting to the Council and the retaining thereof, shall apply to any petition filed with the City Clerk under this section. The sufficiency or insufficiency of any recall petition shall not be subject to review by the Council.

Sec. 432. Action by Council on Recall Petition.

When a recall petition is presented to the Council by the City Clerk, the Council shall within 20 days, by order or ordinance, call for the holding of a special election, and if necessary a special runoff election, for the purpose of submitting to the voters of the City at large, of the Council district, or of the Board district, as the case may be, the question of whether the officer shall be recalled, and if recalled, for the election of his or her successor. The special election shall be held not less than 60 days nor more than 110 days after the date of Council action on the petition; provided, however, that if any other election for any purpose at which all the qualified voters of the City, of the Council District, or of the Board District, as the case may be, are entitled to vote, is to occur during that time period, the Council shall order the holding of the recall election and the consolidation thereof with such other election.

Sec. 433. Supporting and Opposing Arguments.

Any incumbent of an office whose removal is sought may file with the City Clerk an Argument Opposing the Recall, justifying the incumbent's course in office. The person filing the recall petition, or the person or organization on whose behalf a recall petition was filed, shall have the right to present to the City Clerk an Argument Supporting the Recall. These Arguments shall comply with the requirements of the City Election Code with respect to form and time for filing. The costs of printing the

Arguments supporting and opposing the recall in the voter information pamphlet shall be paid by the City.

Sec. 434. Prohibition on Reappointment.

No person who has been removed from an elected office by the recall, or who has resigned from office while recall proceedings were pending, shall be appointed to any office under the Charter for two years after that removal or resignation.

Sec. 435. Recall Ballot.

In addition to the question of whether the incumbent shall be removed from office, each recall ballot shall also list the names of all persons who have been nominated as candidates to succeed the person whose removal is sought. No vote cast for any candidate shall be counted unless the voter also voted on the question of recall of the incumbent. The name of the incumbent shall not appear on the ballot as a candidate for the office. If a majority of the registered voters voting on the matter vote in favor of the recall, then the incumbent shall be removed from office effective on the date the successor qualifies.

Sec. 436. Nomination of Candidates to Replace Recalled Officer.

Any candidate to be voted for at a recall election, other than the incumbent sought to be removed, may be nominated by petition, which petition shall conform to the provisions of the Charter, so far as applicable, relating to nominating petitions at primary nominating elections. Nominating petitions may be circulated upon the City Clerk's certificate of sufficiency of the recall petition. Each nominating petition must be filed with the City Clerk within the time established in the ordinance calling the special election. The City Clerk shall ascertain whether or not the petition is signed by the requisite number of registered voters of the City, Council district, or Board district, as the case may be, in accordance with the requirements of the Charter and the City Election Code. The City Election Code shall govern the circumstances under which and process by which insufficient petitions may be supplemented.

Sec. 437. Election of Candidate to Succeed Recalled Officer.

If the vote at any recall election shall recall an officer of the City of Los Angeles, or a member of the Board of Education, then the candidate who receives a majority of the votes cast for candidates to succeed the officer removed shall be declared elected for the remainder of the term. If no candidate receives a majority of the votes cast, the two candidates receiving the highest number of votes at the recall election shall be candidates at a special runoff election, and whichever candidate receives the majority vote at that election shall be elected to succeed the recalled officer.

Sec. 438. Removal of Appointed Officers.

In addition to any other process for removal provided by law, the incumbent of any appointed office provided for in the Charter or created by ordinance under the authority thereof may be removed at any time after the expiration of three months from appointment by the registered voters of the City. The procedure to effect the removal of the incumbent of an appointive office shall be the same as that for the removal of the incumbent of an elected office by the recall, with the following exceptions:

(a) The petition for the removal of the incumbent of an appointed office shall be signed by registered voters equal in number to at least 20% of the entire vote cast for the office of

Mayor at the last preceding general municipal election, or primary nominating election, at which a Mayor was elected.

(b) If a majority of the registered voters voting on the question vote in favor of the removal of the appointed officer, the officer shall be removed from office upon the declaration of the result of the election by the Council, and the office shall thereupon become vacant. The vacancy shall be filled by the appointing power in the same manner as other vacancies, but any appointed officer so removed shall not be eligible to any appointed or elected office under the Charter until the expiration of two years after removal.

Sec. 439. Resignation or Vacancy Pending Removal.

In the event that any appointed officer whose removal is sought resigns at any time after the filing of a removal petition with the City Clerk, or a vacancy from any other cause occurs in that office, at any time prior to two days before the election, the election shall be held, but the incumbent shall not be eligible to any appointed or elected office under the Charter until the expiration of two years from the date of resignation or removal.

Sec. 440. Removal of the City Clerk.

In the event that the City Clerk is the officer whose removal is sought by petition, all powers and duties prescribed in this Article for the City Clerk shall be performed by the City Attorney and not by the City Clerk.

INITIATIVE

Sec. 450. Subject of Initiative.

(a) Any proposed ordinance which the Council itself might adopt may be submitted to the Council by a petition filed with the City Clerk, requesting that the ordinance be adopted by the Council or be submitted to a vote of the electors of the City. Any proposed ordinance amending or repealing an ordinance previously adopted by a vote of the electors may be submitted to the Council by a petition filed with the City Clerk requesting that the ordinance be submitted to a vote of the electors of the City.

(b) Petitions to amend the Charter shall be governed by provisions of the California Constitution and applicable provisions of state law concerning Charter amendments.

Sec. 451. Initiative Petition.

Any petition submitting a proposed ordinance to the Council as provided in this Article shall comply with the provisions of the Charter and the City Election Code. The following shall apply to all initiative petitions:

(a) Prior to the circulation of any initiative petition, the proponents of the petition shall submit a draft of the petition to the City Clerk, setting forth the proposed ordinance in full. In accordance with procedures contained in the City Election Code, the City Attorney shall prepare an official title and summary of the petition provisions of the proposed ordinance. The official title and summary shall be incorporated into and appear on all copies of the initiative petition circulated for signatures and filed with the City Clerk.

(b) All names signed to a petition must have been secured not more than 120 days prior to the date of filing. Any signature affixed outside of this time period shall not be counted in determining the sufficiency of the petition. To qualify for presentation to the Council, an initiative petition shall be signed by registered voters of the City in a number equal to 15% of the total number of votes cast for all candidates for the office of

Mayor at the last general municipal election, or primary nominating election, at which a Mayor was elected prior to the filing of the petition. In order to be accepted for filing with the City Clerk, the petition must on its face purport to have the requisite number of signatures appended to it.

(c) The City Clerk shall examine the petition and determine whether it contains the requisite number of signatures of registered voters, in accordance with procedures contained in the City Election Code. When the City Clerk has completed the examination of the petition, the Clerk shall prepare a dated certificate showing the result of the examination, and shall notify the sponsors of the petition of either the sufficiency or insufficiency of the petition without delay.

(d) The City Election Code shall govern the process by which and circumstances under which an insufficient petition may be supplemented, the process by which a certificate of insufficiency may be contested, and the process by which and circumstances under which the signer of a petition may withdraw his or her name.

(e) If, by the certificate of the City Clerk, the petition is shown to be sufficient, the City Clerk shall present the petition to the Council without delay. The sufficiency or insufficiency of the petition shall not be subject to review by the Council.

(f) No amendments, changes, alterations or corrections of any kind, clerical or otherwise, shall be permitted to be made in any petition after it has been filed with and approved by the City Clerk.

Sec. 452. Action by Council on Initiative Petition Requesting Adoption of Ordinance.

When an initiative petition requesting the adoption by the Council of a proposed ordinance is presented to the Council by the City Clerk, the Council must take one of the following actions within 20 days after the presentation:

- (a) adopt the proposed ordinance, without alteration;
- (b) call a special election to be held not earlier than 110 days nor more than 140 days after Council action on the petition to submit the proposed ordinance, without alteration, to a vote of the electors of the City; and
- (c) determine to submit the proposed ordinance, without alteration, to a vote of the electors of the City at the earlier of the following two elections that occurs more than 110 days from the date of Council action on the petition:
 - (1) the next regular City election; or
 - (2) a special election consolidated with the next election conducted by the County of Los Angeles occurring wholly or partially within the same area, provided that the voters eligible to vote in the County-conducted election comprise 100% of all the voters eligible to vote on the measure.

Any ordinance proposed by initiative petition, adopted by the Council and approved by the Mayor, or adopted over the Mayor's veto, shall be subject to a referendary vote as provided in Section 460 in the same manner as other ordinances adopted by the Council.

Sec. 453. Action by Council on Initiative Petition Requesting Amendment or Repeal of Ordinance.

When an initiative petition requesting the submission of a proposed ordinance amending or repealing an ordinance

previously adopted by a vote of the electors is presented to the Council by the City Clerk, the Council must submit the proposed ordinance to a vote of the electors of the City at the next election for any purpose at which all the qualified voters of the City are entitled to vote, that shall be held at any time after 90 days from the date of the certification of the petition to the Council by the City Clerk.

Sec. 454. Supporting and Opposing Arguments.

Any person or persons filing an initiative petition or the person or organization on whose behalf the petition is filed, shall have the right to file with the City Clerk, within the time specified by ordinance, an argument favoring the proposed ordinance. The Council shall have the right to present, or permit to be presented and filed with the City Clerk within the same limit of time, an argument opposing the ordinance. Arguments supporting and opposing the ordinance proposed by initiative shall be submitted in accordance with the requirements of the City Election Code. All arguments submitted in connection with any particular measure shall be printed in the voter information pamphlet. The costs of printing supporting and opposing arguments shall be paid by the City.

Sec. 455. Adoption of Ordinances by Initiative.

If a majority, or other percentage as required by law, of the voters voting on any ordinance proposed by initiative petition vote in favor, the ordinance shall become an ordinance of the City upon the declaration by the Council of the result of the election.

REFERENDUM

Sec. 460. Subject of Referendum.

Any ordinance adopted by the Council, except an ordinance taking effect upon its publication or passage as provided in Section 252, is subject to a referendary petition as set forth in this Article.

In addition, the Council is authorized to submit to a vote of the registered voters of the City, at any election for any purpose at which all the registered voters of the City are entitled to vote, any proposed ordinance, order or resolution, that the Council itself might adopt.

Sec. 461. Referendary Petition.

Any referendary petition shall comply with the provisions of the Charter and the City Election Code. The following shall apply to all referendary petitions:

(a) The referendary petition circulated for signature shall contain the full text of the subject ordinance. All names signed to a petition must have been secured within 30 days after publication of the ordinance. Any signature affixed outside of this time period shall not be counted in determining the sufficiency of the petition. To qualify for presentation to the Council, a referendary petition must be signed by registered voters of the City in an amount equal to 10% of the total number of votes cast for all candidates for the office of Mayor at the last general municipal election, or primary nominating election at which a Mayor was elected prior to the filing of the petition.

(b) The provisions of the Charter and the City Election Code relating to filing, examination, certification, supplementation and amendment of initiative petitions, the processing of supporting and opposing arguments, and the presentation of initiative

petitions to the Council by the City Clerk, shall apply to referendary petitions.

(c) If a referendary petition is filed, and the City Clerk certifies that the petition is sufficient, the subject ordinance, order or resolution shall not take effect until adoption by a vote of the electors and declaration by the Council of the result of the election. If the City Clerk certifies that the petition is insufficient, the ordinance shall take effect upon the date of the certificate, but in no event earlier than 30 days from publication of the ordinance.

(d) If more than one petition is filed with respect to the same ordinance, all signatures on all those petitions shall be counted in determining the sufficiency of the petition, as though all the names had been appended to a single petition.

Sec. 462. Action by City Council on Referendary Petition.

When a referendary petition is presented to the City Council by the City Clerk, the Council must take one of the following actions within 20 days of the presentation:

(a) repeal the ordinance;

(b) call a special election to be held not earlier than 110 days nor more than 140 days after action by the Council on the petition to submit the ordinance to a referendary vote; or

(c) determine to submit the ordinance to a vote of the qualified electors of the City for approval or rejection at the next regular City election to be held more than 110 days from date of certification of such petition.

Sec. 463. Conflict Between Measures.

If the provisions of two or more ordinances, orders or resolutions adopted at the same election by vote of the qualified electors of the City conflict, then the ordinance, order or resolution receiving the highest affirmative vote shall prevail.

Sec. 464. Amendment and Repeal of Ordinances Adopted by Initiative and Referendum.

(a) **Initiative.** Any ordinance adopted by a vote of the electors of the City pursuant to an initiative petition cannot be amended or repealed, except by an ordinance proposed either by petition or by the Council at its own instance and adopted by a vote of the electors, or by an amendment of the Charter superceding the ordinance.

(b) **Referendum.** Any ordinance, order or resolution adopted by referendum shall be subject to amendment or repeal as provided in subsection (a). In addition, any ordinance, order or resolution shall be subject to amendment or repeal by the Council at any time, but amendment or repeal shall not be made within six months after adoption, except by unanimous vote of the Council, and the amendment or repeal shall be subject to a referendary vote as provided in this Article.

CAMPAIGN FINANCE

Sec. 470. Limitations on Campaign Contributions in City Elections.

(a) **Purpose.** The purpose of this section is to encourage a broader participation in the political process by placing limits on the amount any person may contribute or otherwise cause to be available to candidates for election to the offices of Mayor, City Attorney, Controller and City Council of the City of Los Angeles and by regulating the disposition of unexpended contributions received by or on behalf of such candidates.

This section is intended to supplement the Political Reform Act of 1974.

(b) Definitions.

(1) The definitions set forth in the Political Reform Act of 1974 as amended (Government Code Sections 82000 through 82055) shall govern the interpretation of this section, unless otherwise specified herein.

(2) The term elected City office, as used herein, shall mean the offices of Mayor, City Attorney, Controller and member of the City Council.

(3) The term election shall include a primary nominating election, a general municipal election, a special election and a recall election.

(c) Campaign Contribution Limitations.

(1) No intended candidate for any elected City office, and no committee acting on behalf of such candidate, shall solicit or accept, or cause to be solicited or accepted, any contribution for use in any election for such office unless and until such candidate shall have filed a Declaration of Intent to Solicit and Receive Contributions in connection with candidacy for a specific elected City office. That declaration shall be filed with the City Ethics Commission on a form prescribed by the City Ethics Commission. Once the election takes place, the declaration is thereafter void. No person may file such declaration for more than one elected City office nor have more than one such declaration on file at the same time. A candidate may, however, file a form canceling one declaration and may thereafter file a new declaration.

(2) The candidate and the treasurers of the candidate's controlled committees shall file with the City Ethics Commission on a form prescribed by the City Ethics Commission a statement under oath that the candidate and the treasurers have read and understood Section 470. This statement shall be filed concurrent with the filing of the Declaration of Intent to Solicit and Receive Contributions.

(3) No person shall contribute a total of more than five hundred dollars (\$500) to any candidate for City Council and to his or her controlled committee for a single election. A candidate for City Council and his or her controlled committee shall not accept any contribution or contributions totaling more than five hundred dollars (\$500) from any person for a single election. Nothing in this section is intended to limit the amount a candidate may contribute to his or her campaign for City Council from his or her personal funds.

(4) No person shall contribute a total of more than one thousand dollars (\$1,000) to any candidate for Mayor, City Attorney or Controller and to his or her controlled committee for a single election. A candidate for Mayor, City Attorney or Controller, and or his or her controlled committee, shall not accept any contribution or contributions totaling more than one thousand dollars (\$1,000) from any person for a single election. Nothing in this section is intended to limit the amount a candidate can contribute to his or her candidacy for Mayor, City Attorney or Controller from his or her personal funds.

(5) No person shall make to any committee (other than the candidate's controlled committee) which supports or

opposes any candidate for Mayor, City Attorney, Controller or City Council, and no such committee shall accept from any such person, a contribution or contributions totaling more than five hundred dollars (\$500) in any calendar year.

- (6) No person shall make a contribution in connection with a single election for an elected City office which would cause the aggregate amount of such contributions by that person to exceed a sum equal to five hundred dollars (\$500) multiplied by the number of City Council offices appearing on the ballot at that election plus one thousand dollars (\$1,000) multiplied by the number of City-wide offices appearing on the ballot at that election, but in no case less than one thousand dollars (\$1,000), in connection with all candidates in that election seeking election to all elected City offices; provided, however, that a candidate shall not be limited by this subsection (6) in the amount he or she may contribute or expend in connection with his or her own campaign, subject to the provisions of subsection (c) (10) of this section.

- (7) Contributions From Persons Other than Individuals.

(A) No candidate for City Council, together with the controlled committee of such candidate, shall accept more than a total of one hundred fifty thousand dollars (\$150,000) in contributions from persons, other than individuals, in connection with any election.

(B) No candidate for City Attorney or Controller, together with the controlled committee of such candidate, shall accept more than a total of four hundred thousand dollars (\$400,000) in contributions from persons, other than individuals, in connection with any election.

(C) No candidate for Mayor, together with the controlled committee of such candidate, shall accept more than a total of nine hundred thousand dollars (\$900,000) in contributions from persons, other than individuals, in connection with any election.

(D) If a candidate for elected City office declines matching funds and receives contributions or spends an amount exceeding the applicable expenditure ceilings, this subsection shall not apply to any of the candidates for the same office.

- (8) No person shall make, and no person or candidate shall solicit or accept any loan of more than five hundred dollars (\$500) for use in connection with an election for City Council, or of more than one thousand dollars (\$1,000) for use in connection with an election for Mayor, City Attorney or Controller. Further, no person shall make, and no person or candidate shall solicit or accept any loan for use in connection with an election for City office for a period of more than 30 days. Loans to a candidate or to a candidate's controlled committees shall be counted against the contribution limitations applicable to the candidate. A candidate is not prohibited from obtaining a personal loan of any amount from a licensed financial lending institution in the regular course of business, unless the loan is made for political purposes. This subsection (8) shall not limit the amount or duration of loans from the candidate to his or her own campaign.

- (9) Any contributions solicited or accepted pursuant to this section shall be expended only in connection with the candidacy for the office specified in the candidate's Declaration of Intent to Solicit and Receive Contributions. Contributions solicited or accepted pursuant to this section for one individual shall not be expended for the candidacy of any other individual seeking City office or in support of or in opposition to any City ballot measure. No candidate, committee controlled by a candidate, or elected City officer shall use contributed funds to make any contribution to any other candidate running for office or to any committee supporting or opposing a candidate for office. Provided, however, a candidate shall not be prohibited from making a contribution from his or her own personal funds to his or her own candidacy, to the candidacy of any other candidate for elected City office or in support of or in opposition to any City ballot measure.

- (10) No candidate shall expend or contribute more than thirty thousand dollars (\$30,000) in personal funds in connection with his or her campaign for elected City office unless and until the following conditions are met.

(A) Notice of the candidate's intent to so expend or contribute shall be provided by registered mail to all opponents and to the City Ethics Commission at least 30 days in advance of the election, specifying the amount intended to be expended or contributed.

(B) All personal funds to be expended or contributed by the candidate in excess of thirty thousand dollars (\$30,000) shall first be deposited in the candidate's campaign contribution checking account at least 30 days before the election.

Each opponent of any candidate who has complied with the above conditions shall be permitted to solicit and receive, and contributors to each such opponent may make, contributions in excess of the limitations established in subsections (c)(3) and (4) until such opponent has raised contributions in amounts above such limits equal to the amount of personal funds deposited by the candidate in his or her campaign contribution checking account.

(d) **Cash Contributions.** No person shall make, and no candidate or committee shall solicit or accept, any cash contribution in excess of twenty-five dollars (\$25).

(e) **Anonymous Contributions.** Total anonymous contributions to a candidate or committee which exceed in the aggregate two hundred dollars (\$200) with respect to a single election shall not be used by the candidate or committee for whom such contributions were intended, but instead, such excess shall be paid promptly to the City Treasurer for deposit in the General Fund of the City.

(f) **Adjustment of Limits.** The amounts specified in subsections (c) and (d) of this section may be modified from time to time by ordinance to reflect changes in the consumer price index for the Los Angeles-Long Beach metropolitan statistical area.

(g) **Campaign Contribution Checking Account.** No more than one campaign contribution checking account shall be established by each candidate for elected City office, and by each committee supporting or opposing such candidate. The account shall be established at an office of a bank or savings and loan

institution located in the City of Los Angeles. Upon opening such account, the candidate shall file with the City Ethics Commission within ten days of opening the campaign bank account, the name of the bank or savings and loan institution and the account number. Funds shall only be disbursed from such account by checks signed by the candidate, treasurer or designated agent of the treasurer. A candidate, treasurer or designated agent of the treasurer shall deposit into the campaign checking account all contributions received in connection with a City election. A candidate, treasurer or designated agent of the treasurer shall pay all campaign expenditures for a City election with monies from this campaign checking account.

If a candidate has other controlled committees and such committees have checking accounts, the candidate shall notify the City Ethics Commission in writing of these committees and the names and addresses of the banks or savings and loan institutions and the account numbers of any such accounts. A candidate shall notify the City Ethics Commission of these committees, the banks or savings and loan institutions, and the account numbers concurrent with the filing of the Declaration of Intent to Solicit and Receive Contributions. If committees are thereafter formed or accounts thereafter opened, then the candidate shall notify the City Ethics Commission on the next regular business day on which the office is open. No contribution shall be commingled with the personal funds of the candidate or any other person.

This subsection shall not prohibit the establishment of savings accounts or certificates of deposit, provided that no campaign expenditures may be made therefrom.

(h) **Treasurer.** A candidate having campaign committees for elected City office shall appoint a treasurer of each committee. No expenditure shall be made by or on behalf of a committee without the authorization of the treasurer or that of his or her designated agents. No contribution or expenditure shall be accepted or made by or on behalf of a committee at a time when there is a vacancy in the office of treasurer. It shall be the duty of the candidate and the treasurer to approve and authorize such payments and to retain such authorizations, detailed accounts, records, bills and receipts.

(i) **Accountability.** The candidate and the treasurer shall maintain such detailed accounts, records, bills and receipts as are necessary to prepare campaign statements. The candidate and the treasurer shall retain the detailed accounts, records, bills and receipts for the periods specified in the Political Reform Act of 1974 as amended. Every candidate and committee shall make available on demand to any public officer having legal authority to enforce this section, details of checking and financial accounts of each committee controlled by the candidate and all records supporting such details.

(j) **Petty Cash Fund.** Subsection (g) notwithstanding, a candidate, campaign treasurer and other designated agents authorized to issue checks on a campaign contribution checking account may disburse to the candidate or committee establishing the checking account an amount not greater than fifty dollars (\$50) per week to be used for petty cash purposes by the candidate or committee.

(k) **Assumed Name Contributions.** No contribution shall be made, directly or indirectly, by any person or combination of persons, acting jointly in a name other than the name by which they are identified for legal purposes, nor in the name of another

person or combination of persons. No person shall make a contribution in his, her or its name of anything belonging to another person or received from another person on the condition that it be used as a contribution. In the event it is discovered by a candidate or committee treasurer that a contribution has been received in violation of this subsection, the candidate or treasurer shall promptly pay the amount received in violation of this subsection to the City Treasurer for deposit in the General Fund of the City.

(l) **Campaign Expenditures – Uncontrolled by Candidate or Committee.** Persons or organizations not subject to the control of a candidate or committee but who make independent expenditures for or against a candidate or committee shall indicate clearly on any material published, displayed or broadcast that it was not authorized by a candidate or a committee controlled by a candidate.

(m) **Suppliers of Goods and Services – Disclosure of Records Required.** No person who supplies goods or services or both goods and services to a candidate or committee for use in connection with the campaign for an elected City office shall knowingly refuse to divulge or disclose to the City Ethics Commission or to any public officer having legal authority to enforce this section, the details and the records supporting such details of any expenditures made by the candidate or committee in payment for such goods or services or both.

(n) **Duties of City Ethics Commission.** The City Ethics Commission shall administer the provisions of this section. In addition to other duties required under the terms of this section, the City Ethics Commission shall:

- (1) Report apparent violations of this section and applicable state law to the City Attorney.
- (2) Conduct audits and investigations of reports and statements filed by candidates and committees supporting or opposing candidates for City offices as required under both the Political Reform Act of 1974 as amended and this section. The City Ethics Commission shall employ investigators where necessary to fully investigate candidate spending and reporting.
- (3) Enforce or cause to be enforced the provisions of this section pursuant to Section 90002(c) of the Government Code. The City Ethics Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items necessary to the audit and investigation of candidates for election to City office.

(o) **Enforcement.**

- (1) **Criminal Enforcement** – Any person who knowingly or willfully violates any provisions of this section is guilty of a misdemeanor. Any person who causes any other person to violate any provision of this section, or who aids and abets any other person in the violation of any provision of this section, shall be liable under the provisions of this section. Prosecution for violation of any provision of this section must be commenced within two years after the date on which the violation occurred.
- (2) **Civil Enforcement.**
 - (A) Any person who intentionally or negligently violates any provision of this section shall be liable in a civil

action brought by the City Attorney or by a person residing within the City. Where no specific civil penalty is provided, a person may be liable for an amount up to two thousand dollars (\$2,000) for each violation.

- (B) Any person who intentionally or negligently makes or receives a contribution, or makes an expenditure, in violation of any provision of this section shall be liable in a civil action brought by the City Attorney or by a person residing within the City for an amount up to three times the amount of the unlawful contribution or expenditure.
 - (C) If two or more persons are responsible for any violation, they shall be jointly and severally liable.
 - (D) Any person, before filing a civil action pursuant to this subsection, must first file with the City Attorney a written request for the City Attorney to commence the action. The request shall contain a statement of the grounds for believing a cause of action exists. The City Attorney shall respond within 40 days after receipt of the request, indicating whether the City Attorney intends to file a civil action. If the City Attorney indicates in the affirmative, and files suit within 40 days thereafter, no other action may be brought unless the action brought by the City Attorney is dismissed without prejudice.
 - (E) Not more than one judgment on the merits with respect to any violation may be obtained under this subsection. Actions brought for the same violation or violations shall have precedence for purposes of trial in the order of the time filed. Such actions shall be dismissed once judgment has been entered or a settlement approved by the court in a previously filed action. The court may dismiss a pending action without prejudice to any other action for failure of the plaintiff to proceed diligently and in good faith. The action may be so dismissed on motion by the City Attorney or any plaintiff in an action based on the same violation.
 - (F) In determining the amount of liability under this subsection, the court may take into account the seriousness of the violation and the degree of culpability of the defendant.
 - (i) No civil action alleging a violation of subsection (c) of this section, in connection with a contribution or expenditure shall be filed more than four years after an audit could begin as set forth in the Political Reform Act of 1974 as amended.
 - (ii) No civil action alleging a violation of any provisions of this section other than subsection (c) of this section shall be filed more than four years after the date of the violation.
- (p) **Effect of Violation on Outcome of Election.**
- (1) If a candidate is convicted of a misdemeanor violation of any provision of this section, the court shall make a determination as to whether the violation had a material effect on the outcome of the election. If the court finds such a material effect, then:

- (A) if such conviction becomes final before the date of the election, the votes for such candidate shall not be counted, and the election shall be determined on the basis of the votes cast for the other candidates in that race;
 - (B) if such conviction becomes final after the date of the election, and if such candidate was declared to have been elected, then such candidate shall not assume office, the office shall be deemed vacant and shall be filled as otherwise provided in the Charter;
 - (C) if such conviction becomes final after the candidate has assumed office, then the candidate shall be removed from office, the office shall be deemed vacant and shall be filled as otherwise provided in the Charter; and
 - (D) the person so convicted shall be ineligible to hold any elected City office for a period of five years after the date of such conviction.
- (2) The City Clerk shall not issue any certificate of nomination or election to any candidate until his or her pre-election campaign statements required by the Political Reform Act of 1974, as amended, or if no campaign statement is required, the written declaration permitted under Section 84205 of the Government Code, have been filed in the form and at the place required by the Political Reform Act of 1974.
 - (q) **Verification.** All declarations, reports and statements filed under this section shall be signed and verified by the filer under penalty of perjury. The candidate and any person signing declarations, reports and statements under this provision shall read, know and understand the contents of all such declarations, reports and statements.
 - (r) **Injunction.** The City Attorney on behalf of the people of the City of Los Angeles or any person residing in the City of Los Angeles may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this section. The Court may award a plaintiff or defendant who prevails his or her costs of litigation, including reasonable attorney's fees; provided, however, that no such award may be granted against the City of Los Angeles.
 - (s) **Severability.** If any provision or portion of this section is for any reason held to be invalid or unconstitutional by the decision of any court, such decision shall not affect the remaining portions of this section.

Sec. 471. Public Matching Funds and Campaign Expenditure Limitations.

(a) Findings and Purposes.

- (1) Monetary contributions to political campaigns are a legitimate form of participation in the American political process, but the financial strength of certain individuals or organizations should not permit them to exercise a disproportionate or controlling influence on the election of candidates.
- (2) Therefore, this section is enacted to accomplish the following purposes:
 - (A) To assist serious candidates in raising enough money to communicate their views and positions adequately to the public without excessive expenditures or

contributions, thereby promoting public discussion of the important issues involved in political campaigns.

- (B) To limit overall expenditures in campaigns, thereby reducing the pressure on candidates to raise large campaign funds for defensive purposes, beyond the amount necessary to communicate reasonably with voters.
- (C) To provide a source of campaign financing in the form of limited public matching funds.
- (D) To substantially restrict fund-raising in non-election years.
- (E) To increase the value to candidates of smaller contributions.
- (F) To reduce the excessive fund-raising advantage of incumbents and thus encourage competition for elective office.
- (G) To help restore public trust in governmental and electoral institutions.

(b) Matching Funds and Expenditure Limitations Authorization. The City shall also adopt by ordinance limitations on campaign expenditures by candidates for elected City office who qualify for and accept public matching funds. The City shall adopt by ordinance regulations concerning the use of public funds to partially finance campaigns for elected City office through a system of matching public funds for qualifying campaign contributions. Such ordinances may be amended to further the purposes of this section of the Charter.

(c) Appropriation of Funds.

- (1) The City Council shall appropriate two million dollars (\$2,000,000) per fiscal year for public matching funds, subject to the limitations in subsection 2, below. The Council shall appropriate such funds for each following fiscal year. The amount of such appropriation shall be adjusted for cost of living changes based on the percentage increase or decrease in the Consumer Price Index (for all items other than housing) for the Los Angeles-Long Beach metropolitan statistical area.
- (2) All such funds shall be appropriated into a trust fund established by the Council by ordinance with interest accruing to the fund. The amount in the trust fund shall not exceed eight million dollars (\$8,000,000) in any fiscal year, and the amount otherwise required herein to be appropriated annually to that fund shall be reduced by the amount estimated as necessary to comply with such limitation. Such amount shall be adjusted for cost of living changes based on the percentage increase or decrease in the Consumer Price Index (for all items other than housing) for the Los Angeles-Long Beach metropolitan statistical area.
- (3) If there are insufficient funds to provide the maximum matching funds available to a candidate in any election, as specified by ordinance, the limitations on total contributions from persons other than individuals imposed by Section 470 shall not apply to any of the candidates for the same office.
- (4) The funds used to make payments for matching funds shall come exclusively from City sources of revenues.

ARTICLE V DEPARTMENTS

GENERAL PROVISIONS RELATED TO DEPARTMENTS

Sec. 500. Creation and Management of Departments.

(a) There shall be the following departments each of which shall be under the control and management of a board of commissioners that shall be the head of the department:

- Fire
- Fire and Police Pensions
- Library
- Los Angeles City Employees' Retirement System
- Police
- Public Works
- Recreation and Parks

(b) There shall be the following departments each of which shall be under the control and management of a chief administrative officer, who shall be the head of the department:

- City Planning
- Personnel

(c) The phrase "departments having control of their own special funds" and "departments which have control of definite revenue or funds" and other substantially equivalent terms used in the Charter shall mean the departments of Fire and Police Pensions, Los Angeles City Employees' Retirement System, Library, Recreation and Parks, and the Proprietary Departments.

Sec. 501. Boards of Commissioners.

(a) **Creation.** Each department created in the Charter shall have a board of commissioners consisting of five commissioners, unless some other number is provided in the Charter for a specific board.

Each board shall be known as the Board of (insert name of department) Commissioners, except that the Board of the Personnel Department shall be known as the Board of Civil Service Commissioners.

(b) **Attendance Fees.** The Council shall, by ordinance adopted by a two-thirds vote, establish the amount of attendance fees to be paid to commissioners. Attendance fee ordinances shall be adopted no more frequently than once a year.

(c) **Term.** A commissioner term shall be five years, beginning on July 1. The terms of the commissioners shall be designated so that as much as possible the terms of office are staggered. The period of the term of each commissioner shall be designated in the appointment. An appointment to fill an unexpired term on any board shall be for the period of the unexpired term.

(d) **Qualifications.** No person shall be appointed to a Charter created commission who is not a registered voter of the City. This requirement shall also apply to standing commissions created by ordinance that are advisory to a department or office. This requirement does not apply to commissioners who are elected or who serve *ex officio*.

(e) **Diversity.** Unless otherwise provided in the Charter, the Mayor, Council or other appointing authority shall strive to make his or her overall appointments to appointed boards, commissions or advisory bodies established by the Charter or ordinance reflect the diversity of the City, including, but not limited to, communities of interest, neighborhoods, ethnicity, race, gender, age and sexual orientation.

Sec. 502. Appointment and Removal of Commissioners.

(a) **Appointment.** Unless otherwise provided in the Charter, commissioners of Charter created boards and of standing commissions created by ordinance that are advisory to, or manage a department or appointed office, or perform regulatory functions, shall be appointed by the Mayor, subject to the approval of the Council. The Mayor shall appoint the commissioners of all other ordinance created commissions, unless otherwise provided in the ordinance.

Within 45 days of a vacancy created by the expiration of a term of office or otherwise, the Mayor shall submit to the Council for its approval the name of the Mayor's appointee to serve for the next ensuing term or remainder of the unexpired term created by the vacancy.

If the Council does not disapprove the appointment within 45 days after its submission to the Council, the appointment shall be deemed approved. If the Council disapproves an appointment, the Mayor shall make and submit to the Council a new appointment within 45 days of Council disapproval. Each subsequent Council disapproval of a mayoral appointment shall create a new 45 day period.

(b) **Appointment by President of the Council.** In the event the Mayor fails to submit an appointment to the Council within any of the 45 day periods provided in this section, the President of the Council shall, within an additional 45 days, submit an appointment for that office to the Council for its approval. If the Council does not disapprove the appointment made by the President of the Council within 45 days after submission, the appointment shall be deemed approved by the Council.

If the Council disapproves the appointment made by the President of the Council within the 45 day period, the President of the Council shall make a new appointment to the office involved within 45 days of the disapproval of the previous appointment. Each subsequent disapproval of an appointment made by the President of the Council shall create a new 45 day period.

(c) **Appointment by Council Resolution.** Upon failure of the President of the Council to submit an appointment to the Council for its approval as provided in this section, that appointment shall be made by the Council, by resolution, within 45 days from the expiration of the 45 day period within which the President of the Council failed to act.

(d) **Removal.** Members of a board or commission, other than the City Ethics Commission and the Police Commission, who are appointed by the Mayor subject to approval by the Council, may be removed by the Mayor without Council confirmation. Members of the Police Commission may be removed by the Mayor, but a removed member may, within ten calendar days of the removal, appeal the action to the Council. Within ten Council meeting days of receipt of the appeal, the Council may reinstate the commissioner by a two-thirds vote of the Council. Failure of the Council to reinstate the commissioner during this time period shall constitute a denial of the appeal. Action on an appeal shall be by an action separate from the approval of the appointment of a successor to the removed member. Members of the City Ethics Commission may be removed in accordance with Section 700.

Sec. 503. Organization of the Board.

(a) **Officers.** Each of the boards created in the Charter shall elect one of its members President and one Vice-President. Officers shall hold office for one year and until their successors are elected, unless their membership on the board expires sooner. Elections shall be held during its last meeting in July of each year, but the board may fill the unexpired term of any vacancy occurring in the office of President or Vice-President at any meeting.

(b) **Meetings.** Each board shall hold a regular meeting at least twice a month. All meetings shall be in a municipal or other facility open to the public.

(c) **Action.** Each board shall exercise the powers conferred upon it by the Charter by order or resolution adopted by a majority of its members. Action of the board shall be attested by the signatures of the President or Vice-President, or two members of the board, and by the signature of the secretary of the board.

Sec. 504. Secretary and Chief Accounting Employee.

(a) **Secretary to the Board.** The head of each department shall appoint an employee of the department other than a member of the board, to serve as secretary to the board. The secretary shall perform those duties imposed upon him or her by the Charter, ordinance or order of the board.

(b) **Chief Accounting Employee.** The head of each department shall appoint an employee of the department, other than a member of the board or the chief administrative officer, to serve as chief accounting employee. The chief accounting employee shall perform those duties imposed upon him or her by the Charter, by ordinance, or by the board.

(c) **Appointment Subject to Civil Service.** Appointments made under this section are subject to the civil service provisions of the Charter. The Council may provide by ordinance for combining the positions of secretary and chief accounting employee with other positions in the civil service.

Sec. 505. Approval by Chief Accounting Employee of Use of Funds.

The written approval of the chief accounting employee shall be required for the withdrawal of money from any fund of any department created by the Charter under the control and management of a board of commissioners. However, this requirement does not apply to withdrawals made for the purpose of purchases through a centralized City purchasing system.

Sec. 506. Powers of the Board and the Head of the Department.

Subject to the provisions of the Charter, and to any ordinances as are not in conflict with the grants of power made to each department in the Charter:

(a) **Management.** The head of each department shall have power to supervise, control, regulate and manage the department.

(b) **Rules and Regulations.** The head of each department shall have the power to make and enforce all rules and regulations necessary for the exercise of the powers conferred upon the department by the Charter. The board of each department under the control and management of a general manager shall have the power to make and enforce all rules and regulations necessary for the exercise of powers and the performance of the duties conferred upon that board by the Charter. Every order or resolution adopting a rule of general application to be followed by

the public shall be published once in a daily newspaper and shall take effect upon publication. Those rules, when adopted by order of a general manager who is the head of a department, shall be subject to the approval of the Mayor.

(c) **Acquisition of Real Property; Approval of Contracts.** Subject to Section 373, any action by a department created in the Charter authorizing the acquisition or sale of real property, approving of contracts which obligate the City for a longer period of time than as provided by ordinance, or which involve consideration reasonably valued in excess of such monetary limitation as provided by ordinance, shall be taken by the head of the department by order or resolution.

(d) **Police Power.** No grant of power by the Charter to any department or board of City government shall be construed to restrict the power of the Council to enact ordinances under the police power of the City, except as otherwise specifically provided in the Charter.

Sec. 507. Chief Administrative Officers.

Other than the elected offices, each department and office established by the Charter or created by ordinance, and each of the Public Works bureaus of Contract Administration, Engineering, Sanitation, Street Lighting, and Street Services shall have a chief administrative officer. In departments under the control and management of a board of commissioners, the chief administrative officer administers the affairs of the department. In departments and offices not under the control and management of a board of commissioners, the chief administrative officer has full charge and control of all work of the department or office. Elsewhere in the Charter and in the Los Angeles Administrative Code, chief administrative officers may have different position titles including general manager and director.

Sec. 508. Appointment and Removal of Chief Administrative Officers.

(a) **Applicability.** Subsections (a) through (e) of this section shall apply to all chief administrative officers, except the Chief of Police, the Executive Officer of the City Ethics Commission, the Executive Director of the Employee Relations Board, the general managers of the Fire and Police Pensions and the Los Angeles City Employees Retirement System, and the general managers of the Proprietary Departments. The following shall also be considered chief administrative officers for the purposes of this section: the Treasurer; the Executive Director of any City commission or agency created by ordinance that performs regulatory functions; and the executive director of all other ordinance created commissions or agencies unless the ordinance creating the commission or agency provides otherwise. The provisions of this section shall not apply to the Chief Legislative Analyst.

(b) **Appointment.** Each chief administrative officer to whom this section applies shall be appointed by the Mayor, subject to confirmation by the Council. If the Council does not disapprove the appointment within 45 days after its submission to the Council, the appointment shall be deemed approved. The Mayor may, but shall not be required to, use the assistance of the Personnel Department in the recruitment and selection of candidates for appointment. No chief administrative officer appointed under this section shall acquire any property interest in employment in that position.

(c) **Temporary Appointments.** The Mayor must fill any vacancy in the position of chief administrative officer within ten days of the vacancy. The Mayor may appoint a temporary chief administrative officer for six months, which period may be extended with the consent of Council for an additional six months. If no permanent appointment has been submitted to the Council during the initial or extended period, the temporary appointment shall be deemed submitted as a permanent appointment, and the time period for Council approval or disapproval shall commence as of that date.

(d) **Annual Review.** The Mayor shall evaluate each chief administrative officer annually. The Mayor shall set or adjust the amount of compensation for the chief administrative officer within the guidelines established by Council, after recommendations concerning those guidelines have been made to the Council by the Director of the Office of Administrative and Research Services.

(e) **Removal.** The Mayor may remove, by written notice, the City Clerk and the Treasurer, subject to approval by the Council. The Mayor may remove, by written notice, all other chief administrative officers to whom this section applies without Council confirmation. However, those removals may be appealed to the Council in accordance with this subsection. Within ten calendar days of the removal, the chief administrative officer may appeal the removal to the Council. Within 10 Council meeting days of receipt of the appeal, the Council may reinstate the chief administrative officer by a two-thirds vote of the Council. Failure of the Council to reinstate the chief administrative officer during this time period shall constitute a denial of the appeal.

(f) **Chief Administrative Officers Appointed by a Commission.** Any chief administrative officer or executive director that is appointed by a Commission pursuant to ordinance shall be annually reviewed by the appointing commission. That commission shall set or adjust the compensation for the chief administrative officer or executive director within the salary guidelines established by Council, after recommendations concerning those guidelines have been made to the Council by the Director of the Office of Administrative and Research Services. The commission shall forward a copy of the evaluation and salary determination to the Mayor and Council for information.

Sec. 509. Powers of Chief Administrative Officer of Department Under the Control of a Board of Commissioners.

Subject to the provisions of the Charter, the rules of the department and the instruction of his or her board, the chief administrative officer of a department or bureau under the control and management of a board of commissioners, except the Police Department, shall:

- (a) administer the affairs of the department or bureau as its chief administrative officer;
- (b) appoint, discharge, suspend, or transfer the employees of the department or bureau, other than the secretary of the board and the chief accounting employee of the department, all subject to the civil service provisions of the Charter;
- (c) issue instructions to employees, in the line of their duties, all subject to the civil service provisions of the Charter;
- (d) expend the funds of the department or bureau in accordance with the provisions of the budget appropriations or of appropriations made after adoption of the budget;

(e) recommend to the board of the department prior to the beginning of each fiscal year an annual departmental budget covering the anticipated revenues and expenditures of the department or bureau, conforming so far as practicable to the forms and dates provided in Article III in relation to the general City budget;

(f) certify all expenditures of the department or bureau to the chief accounting employee;

(g) file with the board and the Mayor a written report on the work of the department or bureau on a regular basis and as requested by the Mayor or board; and

(h) exercise any further powers in the administration of the department as may be conferred upon him or her by the board of the department.

Sec. 510. Powers of Chief Administrative Officer of Department Under the Management and Control of Chief Administrative Officer.

Each chief administrative officer who is the head of the department shall:

- (a) have full charge and control of all work of the department;
- (b) be responsible for the proper administration of its affairs;
- (c) appoint, discharge, suspend or transfer all employees of the department, subject to the civil service provisions of the Charter;
- (d) issue instructions to employees in the line of their duties, all subject to the civil service provisions of the Charter;
- (e) as authorized by ordinance, assign employees of the department as are required for the carrying out of the powers and duties of the board of commissioners, if any;
- (f) provide technical assistance and information as requested in writing by the board of commissioners of the department, if any;
- (g) prior to the beginning of each fiscal year submit an annual budget covering the anticipated revenues and expenditures of the department, including, pursuant to the instructions of the board of commissioners, if any, the money required for the proper conduct of the board's affairs;
- (h) expend the funds of the department in accordance with the provisions of the budget appropriations or of appropriations made after adoption of the budget, including those appropriated for the board of commissioners, if any;
- (i) file with the board and the Mayor a written report on the work of the department on a regular basis and as requested by the Mayor or board; and
- (j) exercise any further powers as may be conferred upon him or her.

Sec. 511. Responsibilities of Boards of Departments Controlling Their Own Funds.

In addition to the other powers and duties imposed upon them by the Charter, the board of each department having control over its own special funds shall:

- (a) provide suitable quarters, equipment and supplies for the department, create the necessary positions in the department, authorize the necessary deputies, assistants and employees and fix their duties, and may require bonds of any or all the department's employees for the faithful performance of their duties; and
- (b) prior to the beginning of each fiscal year, adopt an annual departmental budget and make an annual department budget appropriation, covering the anticipated revenues and expenditures of the department. The departmental budget shall conform as far as practicable, to the forms and times provided in Article III for

the general City budget. Each departmental budget shall contain a sum to be known as the Unappropriated Balance, which sum shall be available for appropriation by the board later in the ensuing fiscal year to meet contingencies as they may arise. A copy of the budget when adopted, and of every resolution subsequently adopted making appropriation from the Unappropriated Balance shall promptly be filed with the Mayor and Controller. No expenditure shall be made or financial obligations incurred by the department except as authorized by the annual departmental budget appropriation, or appropriations made after the adoption of the annual budget, or as otherwise provided in the Charter.

Sec. 512. Temporary Absence or Inability to Act.

Wherever the Charter provides for the discharge of specific duties by a specific appointee other than the Chief of Police, the appointing power may designate an employee in the same department to act in case of the appointee's temporary absence or other inability to act, or upon the written request of such appointee.

Sec. 513. Relationship of General Provisions to Specific Departmental Provisions.

The provisions of this Article shall be subject to any modifications specifically set forth in the sections of the Charter dealing with specific departments.

Sec. 514. Transfer of Powers.

(a) **Charter Created Powers and Duties.** The Mayor may propose the transfer of any of the powers, duties and functions of the departments, offices and boards of the City set forth in the Charter to another department, office or board created by the Charter or by ordinance. The transfer shall be effective if approved by ordinance adopted by a two-thirds vote of the Council, or if the Council fails to disapprove the matter within 45 days after submittal by the Mayor of all documents necessary to accomplish the transfer, including the proposed ordinance transferring powers, duties or functions, and any related ordinances or resolutions concerning personnel or funds affected by the transfer. The Council on its own initiative may, by ordinance, adopted by a two-thirds vote of the Council, subject to the veto of the Mayor or by a three-fourths vote of the Council over the veto of the Mayor, make any such transfer.

(b) **Exceptions.** The power of the Mayor and Council to act as provided in this section shall not extend to:

- (1) Elected Offices;
- (2) Proprietary Departments;
- (3) Los Angeles City Employees' Retirement System;
- (4) Department of Fire and Police Pensions;
- (5) City Ethics Commission;
- (6) The disciplinary functions of the Fire Department and the Police Department as contained in Sections 1060 and 1070; and
- (7) The Police Department and the Fire Department, if the transfer or consolidation would significantly alter or affect the primary purpose or character of the departments.

(c) **Ordinance Created Powers and Duties.** Powers, duties and functions established by ordinance may be transferred or eliminated by an ordinance proposed by the Mayor or Council. If the Mayor proposes a transfer or elimination, the action shall be effective if approved by ordinance adopted by a majority vote of the Council, or if the Council fails to disapprove the matter within

45 days after submittal by the Mayor of all documents necessary to accomplish the transfer or elimination, including the proposed ordinance transferring powers, duties or functions, and any related ordinances or resolutions concerning personnel or funds affected by the transfer or elimination.

FIRE DEPARTMENT

Sec. 520. Powers and Duties of the Department.

The Fire Department shall have the power and duty to:

(a) control and extinguish injurious or dangerous fires and to remove that which is liable to cause those fires;

(b) enforce all ordinances and laws relating to the prevention or spread of fires, fire control and fire hazards within the City, and the waters under the jurisdiction of the City, and vessels or structures thereon, provided however that nothing herein shall require the Fire Department to provide services to, on, in, or for the benefit of any lands, waters, properties or waterfront under the control of the Harbor Department, except pursuant to an agreement by the Board of Harbor Commissioners to reimburse the General Fund for the costs of those services;

(c) conduct fire investigations; and

(d) protect lives and property in case of disaster or public calamity. The scope and extent of those emergency powers and duties and the manner of their exercise shall be prescribed by ordinance consistent with Section 231(i).

Sec. 521. Authority of Officers.

The officers of the Fire Department who are in charge at the scene of any fire or emergency shall have full power and authority to direct the operation of controlling and containing the fire or emergency. The officers may prohibit approach to the fire or emergency site and may remove any person, vehicle, vessel or thing not needed in controlling and containing the fire or emergency or preserving property in the vicinity.

This section shall not limit the authority of the master or officers of any vessel requiring Fire Department response, subject to the Fire Department's authority to control the operations in protection of the public interest.

Sec. 522. Fire Chief.

The chief administrative officer of the Fire Department shall be known as the Fire Chief and shall be appointed and removed as provided in Section 508.

LIBRARY DEPARTMENT

Sec. 530. Powers and Duties of the Department.

The Library Department shall have the power and duty to:

(a) establish, manage, control, and operate a central library and branch libraries within the City, and to acquire and take by purchase, lease, condemnation, gift, in trust, or otherwise, and to hold for the City, any and all property necessary or convenient for those purposes; and

(b) design, construct, alter, and maintain all buildings, structures and grounds devoted to purposes of the department, from any funds under its control and available for those purposes, notwithstanding other provisions of the Charter.

Sec. 531. Financial Support.

(a) For the financial support of the Library Department, there shall be appropriated an annual sum of not less than 0.0175% of

assessed value of all property in the City as assessed for City taxes.

(b) Additional appropriations may be made from the General Fund.

(c) All money derived from (a) or (b) plus sums received by the Library Department from fines, sales, gifts or otherwise in connection with the operation of the library, shall be placed to the credit of the Library Department in a fund to be known as the Library Fund.

Except as provided in Section 342 with regard to funds appropriated from the General Fund to the Library Fund, money in the Library Fund shall be used only for the financial support of the Library Department.

Sec. 532. Board of Library Commissioners.

The Board of Library Commissioners shall control, appropriate and expend all money coming into the Library Fund for the purposes of the department. The board may authorize the Treasurer to invest any surplus funds under its control in accordance with Section 303(b).

Sec. 533. City Librarian.

The chief administrative officer of the Library Department shall be known as the City Librarian and shall be appointed and removed as provided in Section 508.

Sec. 534. Library Property.

Acquisition of real property by the City for library sites shall first be approved by the Board of Library Commissioners. The board shall have full control over all library sites and none of these sites shall be devoted to any other purpose in whole or in part without permission from the board.

Sec. 535. Subsurface Parking Structures.

The Board of Library Commissioners may lease subsurface property under its control in accordance with requirements and proceedings similar to Section 596. Any revenue from these leases shall be credited to the Library Fund. The board may design, construct and operate subsurface parking structures under lands within its control, subject to similar requirements as found in Section 596(a)(1) and (2).

PERSONNEL DEPARTMENT

Sec. 540. Powers and Duties of the Department.

The Personnel Department shall have the power and duty to administer the civil service system in accordance with the civil service provisions of Article X of the Charter and the civil service rules established by the Board of Civil Service Commissioners, and perform any other employment related duties as may be prescribed by ordinance.

Sec. 541. Board of Civil Service Commissioners.

The Board of Civil Service Commissioners shall have the power and duty to make and enforce the civil service rules and to establish and maintain the civil service system in accordance with the civil service provisions of Article X of the Charter.

Sec. 542. Chief Administrative Officer.

The chief administrative officer of the Personnel Department shall be the head of the department and have the powers and duties of general managers set forth in Section 510, except those expressly reserved to the Board of Civil Service Commissioners

as provided in the civil service provisions of Article X of the Charter.

CITY PLANNING DEPARTMENT

Sec. 550. Powers and Duties of the Department.

The Department of City Planning shall have and exercise all the powers and duties provided for it in the Charter or by ordinance.

Sec. 551. City Planning Commission.

The Board of Commissioners of the City Planning Department shall be known as the City Planning Commission and shall consist of nine members. It shall:

(a) give advice and make recommendations to the Mayor, Council, Director of Planning, municipal departments and agencies with respect to City planning and related activities and legislation;

(b) make recommendations concerning amendment of the General Plan and proposed zoning ordinances in accordance with Sections 555 and 558;

(c) make reports and recommendations to the Council and to other governmental officers or agencies as may be necessary to implement and secure compliance with the General Plan; and

(d) perform other functions prescribed by the Charter or ordinance.

Sec. 552. Area Planning Commissions.

The Council shall adopt an ordinance creating not less than five separate bodies to be known as Area Planning Commissions. The ordinance shall establish the boundaries of the area to be served by each Area Planning Commission, which shall be drawn so that all areas of the City are served by an Area Planning Commission. Each Area Planning Commission shall consist of five members. Members shall be appointed and removed in the same manner as members of the City Planning Commission, except that residency in the area served by the Area Planning Commission shall be a qualification for appointment. Except as provided in subsection (d), Area Planning Commissions are quasi-judicial agencies.

Each Area Planning Commission, with respect to matters concerning property located in the area served by the Area Planning Commission, shall have and exercise the power to:

(a) hear and determine appeals where it is alleged there is error or abuse of discretion in any order, requirement, decision, interpretation or other determination made by a Zoning Administrator;

(b) hear and make determinations on any matter normally under the jurisdiction of a Zoning Administrator when that matter has been transferred to the jurisdiction of the Area Planning Commission because the Zoning Administrator has failed to act within the time limits prescribed by ordinance;

(c) hear and determine applications for, or appeals related to, conditional use permits and other similar quasi-judicial approvals, in accordance with procedures prescribed by ordinance;

(d) make recommendations with respect to zone changes or similar matters referred to it from the City Planning Commission pursuant to Section 562; and

(e) hear and determine other matters delegated to it by ordinance.

Sec. 553. Director of Planning.

(a) The chief administrative officer of the Department of City Planning shall be known as the Director of Planning and shall be

appointed and removed as provided in Section 508. The Director shall be chosen on the basis of administrative and technical qualifications, with special reference to actual experience in and knowledge of accepted practice in the field of City planning.

(b) The Director of Planning or his or her designee shall:

- (1) prepare the proposed General Plan of the City and proposed amendments to the General Plan;
- (2) prepare all proposed zoning and other land use regulations and requirements, including maps of all proposed districts or zones;
- (3) make investigations and act on the design and improvement of all proposed subdivisions of land as the advisory agency under the State Subdivision Map Act; and
- (4) have those additional powers and duties provided by ordinance.

Sec. 554. General Plan – Purpose and Contents.

The General Plan shall be a comprehensive declaration of goals, objectives, policies and programs for the development of the City and shall include, where applicable, diagrams, maps and text setting forth those and other features.

(a) **Purposes.** The General Plan shall serve as a guide for:

- (1) the physical development of the City;
- (2) the development, correlation and coordination of official regulations, controls, programs and services; and
- (3) the coordination of planning and administration by all agencies of the City government, other governmental bodies and private organizations and individuals involved in the development of the City.

(b) **Content.** The General Plan shall include those elements required by state law and any other elements determined to be appropriate by the Council, by resolution, after considering the recommendation of the City Planning Commission.

Sec. 555. General Plan - Procedures for Adoption.

Procedures pertaining to the preparation, consideration, adoption and amendment of the General Plan, or any of its elements or parts, shall be prescribed by ordinance, subject to the requirements of this section.

(a) **Amendment in Whole or in Part.** The General Plan may be amended in its entirety, by subject elements or parts of subject elements, or by geographic areas, provided that the part or area involved has significant social, economic or physical identity.

(b) **Initiation of Amendments.** The Council, the City Planning Commission or the Director of Planning may propose amendments to the General Plan. The Director of Planning shall make a report and recommendation on all proposed amendments. Prior to Council action, the proposed amendment shall be referred to the City Planning Commission for its recommendation and then to the Mayor for his or her recommendation.

(c) **Commission and Mayoral Recommendations.** The City Planning Commission shall hold a public hearing before making any recommendation on a proposed amendment to the General Plan and shall act within the time specified by ordinance. If the Commission recommends disapproval of an amendment initiated by the Commission, it shall report its decision to the Council and Mayor. After the Commission recommends approval of an amendment initiated by the Commission, or takes action concerning an amendment initiated by the Director or the Council, the Commission shall forward its recommendation to the

Mayor. The Mayor shall have 30 days to forward his or her recommendation to the Council regarding the proposed amendment to the General Plan. If either the City Planning Commission or the Mayor does not act within the time specified, the Commission or Mayor shall be deemed to have recommended approval of the proposed amendment.

(d) **Council Action.** The Council shall conduct a public hearing before taking action on a proposed amendment to the General Plan.

If the Council proposes any modification to the amendment approved by the City Planning Commission, that proposed modification shall be referred to the City Planning Commission and the Mayor for their recommendations. The City Planning Commission and the Mayor shall review any modification made by the Council and shall make their recommendation on the modification to the Council in accordance with subsection (c) above.

If no modifications are proposed by the Council, or after receipt of the Mayor's and City Planning Commission's recommendations on any proposed modification, or the expiration of their time to act, the Council shall adopt or reject the proposed amendment by resolution within the time specified by ordinance.

(e) **Votes Necessary for Adoption.** If both the City Planning Commission and the Mayor recommend approval of a proposed amendment, the Council may adopt the amendment by a majority vote. If either the City Planning Commission or the Mayor recommends the disapproval of a proposed amendment, the Council may adopt the amendment only by a two-thirds vote. If both the City Planning Commission and the Mayor recommend the disapproval of a proposed amendment, the Council may adopt the amendment only by a three-fourths vote. If the Council proposes a modification of an amendment, the recommendations of the Commission and the Mayor on the modification shall affect only that modification.

Sec. 556. General Plan Compliance.

When approving any matter listed in Section 558, the City Planning Commission and the Council shall make findings showing that the action is in substantial conformance with the purposes, intent and provisions of the General Plan. If the Council does not adopt the City Planning Commission's findings and recommendations, the Council shall make its own findings.

Sec. 557. General Plan Areas.

For the purpose of reviewing or amending the General Plan, the City Planning Commission shall make its recommendations to the Council relative to the division of the entire City into areas and the Council, after considering the recommendations of the City Planning Commission, shall adopt a resolution providing for those General Plan areas. To the extent feasible, general plan areas shall be drawn to keep areas geographically compact, to keep neighborhoods and communities intact, and to utilize natural boundaries and street lines.

Sec. 558. Procedure for Adoption, Amendment or Repeal of Certain Ordinances, Orders and Resolutions.

(a) The requirements of this section shall apply to the adoption, amendment or repeal of ordinances, orders or resolutions by the Council concerning:

- (1) the creation or change of any zones or districts for the purpose of regulating the use of land;

- (2) zoning or other land use regulations concerning permissible uses, height, density, bulk, location or use of buildings or structures, size of yards, open space, setbacks, building line requirements, and other similar requirements, including specific plan ordinances;
 - (3) private street regulations;
 - (4) public projects; and
 - (5) the acquisition of, change of area or alignment to, abandonment of, or vacation of any public right of way, park, playground, airport, public building site or other public way, ground or open space, but not including easements for sewers, storm drains or slopes, nor the temporary transfer of jurisdiction over any portion of a street to another local agency.
- (b) Procedures for the adoption, amendment or repeal of ordinances, orders or resolutions described in subsection (a) shall be prescribed by ordinance, subject to the following limitations:
- (1) *Initiation.* An ordinance, order or resolution may be proposed by the Council, the City Planning Commission, or Director of Planning or by application of the owner of the affected property if authorized by ordinance.
 - (2) *Recommendation of the City Planning Commission.* After initiation, the proposed ordinance, order or resolution shall be referred to the City Planning Commission for its report and recommendation regarding the relation of the proposed ordinance, order or resolution to the General Plan and, in the case of proposed zoning regulations, whether adoption of the proposed ordinance, order or resolution will be in conformity with public necessity, convenience, general welfare and good zoning practice. The City Planning Commission shall act within the time specified by ordinance. After the City Planning Commission has made its report and recommendation, or after the time for it to act has expired, the Council may consider the matter. Failure to act within the time prescribed by ordinance shall be deemed to be a recommendation of approval by the City Planning Commission of the proposed ordinance, order or resolution.
 - (3) *Action by the Council.* Before adopting a proposed ordinance, order or resolution, the Council shall make the findings required in subsection(b)(2) of this section.
 - (A) *Planning Commission Recommendation of Approval.* If the City Planning Commission recommends approval of the proposed ordinance, order or resolution, the Council may adopt an ordinance, order or resolution conforming to the Commission recommendation by majority vote.
 - (B) *Planning Commission Recommendation Against Approval.* If the City Planning Commission recommends against approval of the proposed ordinance, order or resolution, and the matter has been initiated by the filing of an application, the City Planning Commission action shall be final, subject to appeal to the Council in accordance with procedures prescribed by ordinance. The Council shall review the action of the Commission appealed from and may adopt an ordinance, order or resolution contrary to the recommendation of the Commission only by a two-thirds vote. If the City Planning Commission

recommends against approval of the proposed ordinance, order, or resolution, and the matter has been initiated by the Council, the Council may take action on the matter without an appeal. The Council may adopt the proposed ordinance, order or resolution only by a two-thirds vote.

- (C) *Failure of Planning Commission to Act.* If the Commission fails to make any recommendation within the time specified by ordinance, an ordinance, order or resolution in conformity with that which was initiated by the Council or by application shall be prepared and presented to the Council, and may be adopted by majority vote.

Sec. 559. Delegation of Authority.

The City Planning Commission may authorize the Director of Planning to approve or disapprove for the Commission any ordinance, order or resolution or modification thereto which is subject to the provisions of Sections 555 or 558. In exercising that authority, the Director must make the same findings as would have been required for the City Planning Commission to act on the same matter. An action of the Director under this authority shall be subject to the same time limits and shall have the same effect as if the City Planning Commission had acted directly.

Sec. 560. Hearings and Investigations.

The City Planning Commission and Area Planning Commissions may authorize the Director of Planning or his or her designee to conduct hearings on behalf of the commission. The Director of Planning shall make investigations relative to all matters provided for in Sections 555 and 558 as the City Planning Commission may direct and shall file reports with the City Planning Commission.

Sec. 561. Office of Zoning Administration.

There shall be a quasi-judicial agency known as the Office of Zoning Administration. The duties of this office shall be performed by one or more Zoning Administrators as authorized by the Council, who shall be appointed by the Director of Planning subject to the civil service provisions of the Charter. If more than one Zoning Administrator is authorized, a position of Chief Zoning Administrator shall be established, the appointment to which shall be made by the Director of Planning, and the others shall be Associate Zoning Administrators. Subject to rules and regulations as may be prescribed by ordinance, the Office of Zoning Administration shall investigate and determine all applications for variances from any of the regulations and requirements of the zoning ordinances, and shall have other powers and duties with respect to zoning and land use as prescribed by ordinance.

The Council shall by ordinance provide time limits within which a Zoning Administrator must act for each type of case under his or her jurisdiction. If no determination is made by a Zoning Administrator within the prescribed time, the applicant may request that the matter be transferred to the jurisdiction of an Area Planning Commission or other board as prescribed by ordinance.

The Chief Zoning Administrator may adopt rules necessary to carry out the requirements prescribed by ordinance and which are not in conflict or inconsistent with those ordinances. All rules and

regulations shall be available for inspection in the Office of Zoning Administration.

Sec. 562. Variances.

The Council shall prescribe by ordinance the procedures for the granting of variances subject to the following:

(a) **Initial Hearing and Determination.** All applications for variances shall be heard and determined by a Zoning Administrator except as otherwise provided in Section 564.

(b) **Appeals Process.** An aggrieved person may appeal a variance decision of the Zoning Administrator to the Area Planning Commission. The grant of a variance by the Area Planning Commission may be further appealed to the City Planning Commission or Council as prescribed by ordinance. There shall be no further appeal from the decision of the Area Planning Commission to deny a variance. However, that action of the Area Planning Commission is subject to Council review pursuant to Section 245.

(c) **Findings for Granting a Variance.** The following findings shall be made before a variance may be granted:

- (1) that the strict application of the provisions of the zoning ordinance would result in practical difficulties or unnecessary hardships inconsistent with the general purposes and intent of the zoning regulations;
- (2) that there are special circumstances applicable to the subject property such as size, shape, topography, location or surroundings that do not apply generally to other property in the same zone and vicinity;
- (3) that the variance is necessary for the preservation and enjoyment of a substantial property right or use generally possessed by other property in the same zone and vicinity but which, because of the special circumstances and practical difficulties or unnecessary hardships, is denied to the property in question;
- (4) that the granting of the variance will not be materially detrimental to the public welfare, or injurious to the property or improvements in the same zone or vicinity in which the property is located; and
- (5) that the granting of the variance will not adversely affect any element of the General Plan.

The grant of a variance may include conditions that will remedy a disparity of privileges and that are necessary to protect the public health, safety or welfare and assure compliance with the objectives of the General Plan and the purpose and intent of the zoning ordinance. A variance shall not be used to grant a special privilege or to permit a use substantially inconsistent with the limitations upon other properties in the same zone and vicinity. The Zoning Administrator may deny a variance if the conditions creating the need for the variance were self-imposed.

Sec. 563. Conditional Use Permits and Other Approvals.

(a) **Subdivisions.** The procedure for the approval of parcel maps, subdivision maps and other approvals granted pursuant to the State Subdivision Map Act shall be prescribed by ordinance.

(b) **Conditional Use Permits and Other Similar Quasi-Judicial Approvals.** The Council shall prescribe by ordinance the procedure for the granting of conditional use permits and similar quasi-judicial approvals subject to the following:

(1) **Initial Determination.** Applications for conditional use permits and similar quasi-judicial land use approvals shall be heard and determined either by the Zoning Administrator or Area Planning Commission as provided by ordinance. However, the City Planning Commission may adopt rules and regulations, subject to approval by ordinance, that identify classes or categories of quasi-judicial approvals that have citywide impact, and provide for those approvals to be heard and determined by the City Planning Commission instead of an Area Planning Commission.

(2) **Appeals Process.** An aggrieved person may appeal a decision of the Zoning Administrator with respect to a conditional use permit or similar quasi-judicial approval to the Area Planning Commission. Decisions of an Area Planning Commission, except those decisions made by the Area Planning Commission on appeal from a decision of the Zoning Administrator, may be appealed either to the City Planning Commission or Council, as provided by ordinance. However, the process for the approval of conditional use permits and similar quasi-judicial approvals may not include more than one level of appeal from the decision of a decision-making official or body. For purposes of this restriction:

- (A) The use of hearing examiners or other methods by which recommendations are made to a decision-making official or body does not preclude an appeal from the decision of the decision-making official or body.
- (B) If the Council is acting as the appellate body, the Council's action may be subject to Mayoral approval and Council override of Mayoral disapproval by a two-thirds vote of the Council, if so provided by ordinance.
- (C) Council review of an action under Charter Section 245 shall not be considered an appeal for purposes of this section.
- (D) The restrictions on appeals do not apply to any legislative actions.

Sec. 564. Projects Requiring Multiple Approvals.

If a project requires approvals by both the Zoning Administrator and either an Area Planning Commission or the City Planning Commission, those approvals that would otherwise be heard and determined by the Zoning Administrator shall be heard and determined by the Area Planning Commission or City Planning Commission, whichever has jurisdiction over the other approvals required for the project. Approvals for a project that requires both quasi-judicial and legislative actions shall be heard and determined by the City Planning Commission, except as provided in Section 565.

Sec. 565. Delegation of Legislative Authority to Area Planning Commissions.

The City Planning Commission may adopt rules and regulations, subject to approval by ordinance, identifying classes or categories of legislative actions for projects determined not to have citywide impact, and provide for action on those projects to be taken by an Area Planning Commission in lieu of the City Planning Commission.

Sec. 566. Time Limits.

The Council shall by ordinance establish time limits by which action shall be taken on all requests for quasi-judicial approvals and proposed zone changes initiated by application of the affected property owner.

POLICE DEPARTMENT

Sec. 570. Powers and Duties of the Department.

The Police Department shall have the power and duty to enforce the penal provisions of the Charter, City ordinances and state and federal law. In the discharge of these powers and duties, the members of the department shall have the powers and duties of peace officers as defined by state law. The officers and employees of the Police Department shall have the power and duty to protect lives and property in case of disaster or public calamity. The scope and extent of those emergency powers and duties and the manner of their exercise shall be prescribed by ordinance consistent with Section 231(i).

Sec. 571. Board of Police Commissioners.

(a) Members of the Board of Police Commissioners shall serve for a maximum of two five-year terms, except that a member may serve up to two years of an unexpired term plus two terms of five years. A member of the Board of Police Commissioners shall be limited to two consecutive one-year terms as President of the Board of Police Commissioners.

(b) The Board of Police Commissioners shall have the power to:

- (1) issue instructions to the Chief of Police concerning the exercise of the authority conferred on the Chief of Police by the Charter, other than the disciplinary authority conferred by Section 1070;
- (2) evaluate the Chief of Police annually, set or adjust the compensation for the Chief of Police within the salary guidelines established by Council after recommendations concerning those guidelines have been made to the Council by the Director of the Office of Administrative and Research Services; and forward a copy of the evaluation and salary determination to the Mayor and Council for information;
- (3) appoint and remove an Executive Director whose position shall be exempt from the civil service provisions of the Charter and who shall not be a member of the Police Department; and
- (4) appoint and remove an Inspector General of the Police Department subject to Section 245, whose position shall be exempt from the civil service provisions of Article X of the Charter and who shall not be a member of the Police Department.

Sec. 572. Executive Director of the Board of Police Commissioners.

Subject to the provisions of the Charter, the rules of the Police Department, and the instruction of the Board of Police Commissioners, the Executive Director of the Board of Police Commissioners shall have the power and duty to:

- (a) administer the affairs of the Board of Police Commissioners as its chief administrative officer;
- (b) appoint, discharge, discipline, transfer and issue instructions to employees appointed as independent staff of the Board of

Police Commissioners, except for employees under the direction of the Inspector General, all subject to the civil service provisions of Article X of the Charter;

(c) expend the funds designated by budgetary appropriations or appropriations made after adoption of the budget for expenditure by the Board of Police Commissioners or its staff, in accordance with the provisions of those appropriations;

(d) recommend to the Board of Police Commissioners prior to the beginning of each fiscal year a budget covering the anticipated revenues and expenditures of the board and its staff, conforming so far as practicable to the forms and dates provided in the Charter in relation to the general City budget;

(e) certify the expenditures of the Board of Police Commissioners and its staff to the chief accounting employee; and

(f) exercise further powers in the administration of the Board of Police Commissioners conferred upon the Executive Director by the board.

The authority of the Executive Director shall not extend to authority over the Chief of Police nor encroach upon the authority of the Chief of Police to administer the affairs of the Police Department as its general manager and chief administrative officer.

Sec. 573. Inspector General.

The Inspector General shall report to the Board of Police Commissioners and shall have the same access to Police Department information as the Board of Police Commissioners. The Inspector General shall have the power and duty to:

(a) under rules established by the Board of Police Commissioners, audit, investigate and oversee the Police Department's handling of complaints of misconduct by police officers and civilian employees and perform other duties as may be assigned by the board;

(b) conduct any audit or investigation requested by majority vote of the board;

(c) initiate any investigation or audit of the Police Department without prior authorization of the Board of Police Commissioners, subject to the authority of the board by majority vote to direct the Inspector General not to commence or continue an investigation or audit;

(d) keep the board informed of the status of all pending investigations and audits; and

(e) appoint, discharge, discipline, transfer and issue instructions to employees under his or her direction.

Sec. 574. Powers and Duties of the Chief of Police.

The chief administrative officer of the Police Department shall be known as the Chief of Police. Subject to the provisions of the Charter, the rules of the Police Department, and the instruction of the Board of Police Commissioners, the Chief of Police shall have the power and duty to:

(a) suppress all riots, disturbances and breaches of the peace, and to that end may call on any person for aid. The Chief may pursue and arrest, within the limits of the City, any person fleeing from justice, and shall without delay bring all persons arrested by the department before a judge of the proper court for trial or examination. The Chief may receive and execute any proper authority for the arrest and detention of criminals fleeing or escaping from places outside the City;

(b) administer the affairs of the department as its chief administrative officer, except as to matters under the control of the Executive Director of the Board of Police Commissioners;

(c) appoint, discharge, discipline, transfer and issue instructions to the employees of the department, other than the Secretary of the Board, the chief accounting employee of the department, the Inspector General of the Police Department and his or her staff, the Executive Director of the Board and his or her staff, all subject to the civil service provisions of the Charter;

(d) expend the funds of the department, except those funds under the control of the Executive Director, in accordance with the provisions of the budget appropriations or of appropriations made after adoption of the budget;

(e) recommend to the Board of Police Commissioners prior to the beginning of each fiscal year an annual departmental budget covering the anticipated revenues and expenditures of the department, except the anticipated revenues and expenditures under the control of the Executive Director, and conforming so far as practicable to the forms and dates provided in the Charter for the general City budget;

(f) certify all expenditures of the department to the chief accounting employee, except those expenditures under the control of the Executive Director;

(g) exercise further powers in the administration of the department conferred upon the Chief of Police by the Board of Police Commissioners; and

(h) execute, personally or by deputy, and return all writs and processes issued by any court having jurisdiction of criminal cases arising upon violations of the provisions of the Charter or ordinance. The Chief's jurisdiction and that of his or her deputies in the service of process in all criminal cases, and in cases of violation of City ordinances, shall be co-extensive with that of the County of Los Angeles.

Sec. 575. Appointment and Removal of the Chief of Police.

The Chief of Police shall be appointed, shall serve, and shall be removed in accordance with the following provisions:

(a) **Recruitment and Selection.** The recruitment and selection of qualified candidates for the position of Chief of Police shall be administered by the general manager of the Personnel Department, in cooperation with the Board of Police Commissioners, through a system of open competition based on professionally accepted recruitment and selection standards. The general manager of the Personnel Department shall refer a group of at least six highly qualified candidates to the Board of Police Commissioners, which shall then provide a list of three recommended candidates, in ranked order, to the Mayor for review and for appointment of one of them to the Office of Chief of Police. At the request of the Mayor, the Board of Police Commissioners shall provide the Mayor with an additional list of three candidates, in ranked order, from the group of candidates previously provided by the general manager of the Personnel Department. The Mayor's appointee shall be subject to confirmation by the Council. Should the Council fail to confirm the appointee, and if any additional candidates remain, the Mayor may request and receive from the Board of Police Commissioners one additional candidate, who will be selected from the group of candidates previously provided by the general manager of the Personnel Department. The Mayor may appoint that candidate or one of the candidates on the list or lists previously provided to the

Mayor by the Board of Police Commissioners, subject to Council confirmation.

(b) **Term.** The Chief of Police shall serve a five-year term and may be appointed, in the manner described below, to a second five-year term. No person shall serve as Chief of Police for more than ten years altogether. Time accrued as Acting Chief of Police or as a temporary Chief of Police shall not be included in calculating the ten years.

(c) **Reappointment.** If the Chief of Police wishes to be considered for appointment to a second term, he or she shall apply to the Board of Police Commissioners for that appointment at least 180 days prior to the expiration of the first term. At least 90 days prior to the expiration of the first term, the Board of Police Commissioners shall, in its discretion, respond affirmatively or negatively to that application. If the Board of Police Commissioners acts, affirmatively or negatively, on the application for appointment, that action shall be subject to the provisions of Section 245 and the Council may assert its jurisdiction over the matter of the application for appointment. Should that jurisdiction be asserted, any affirmative or negative action on the appointment shall be final. If the Board of Police Commissioners fails to respond to the application within 90 days prior to the expiration of the first term, the Mayor shall, at least 60 days prior to the expiration of the first term, act in lieu of the Board. Should the Mayor so act, the Council, by two-thirds vote, may act within 30 days thereafter to override the Mayor's action. If the Council does not act within 30 days to override the Mayor's action, the action shall be final. If the request of the Chief of Police for appointment to a second term is not approved as provided in this section, there shall be no reappointment and a vacancy in the Office of the Chief of Police shall occur at the expiration of the first term.

(d) **Removal by Board.** The Chief of Police shall serve at the pleasure of the City, as set forth herein, and shall not attain any property interest in the position of Chief of Police. The Board of Police Commissioners may remove the Chief of Police from office at any time prior to the expiration of a first or second five-year term. Should the Board of Police Commissioners so act to remove the Chief of Police, it shall promptly notify the Mayor of its action. If the Council has not asserted its jurisdiction over the matter of the removal of the Chief of Police as permitted under Section 245, the Mayor shall have five days from the last date on which the Council could have asserted jurisdiction to reverse the action of the Board of Police Commissioners. Upon the Mayor's failure to act within that period, the removal shall become effective. By a letter received by the City Clerk within five days of the effective date of the removal, the removed Chief of Police may request a hearing on the removal before the Council which, by two-thirds vote, may override the removal and restore the Chief of Police to office. If the Council asserts jurisdiction over the matter of the removal of the Chief of Police and acts to retain the Chief, the action shall be final. If the action of the Council is to remove the Chief of Police, the removal shall be effective immediately. Should the provision of an appeal from the removal be required by law, the Council shall, by ordinance, provide an appellate procedure in conformance with the law. The Chief of Police may request an appeal by letter to the City Clerk within five days of the effective date of the removal.

(e) **Removal by Council.** The Council may remove the Chief of Police from office in accordance with the following procedures. The Council, by two-thirds vote, may initiate removal proceedings by giving ten days written notice of a public hearing on the proposed removal to the Mayor, the Board of Police Commissioners and the Chief of Police. At the hearing, the Mayor and the Board of Police Commissioners shall appear to discuss with the Council whether the Chief of Police should be removed from office. The views of the Chief of Police shall be heard and considered at his or her request. Thereafter, the Council, by two-thirds vote, may act to remove the Chief of Police from office, and the removal shall be effective immediately. Should the provision of an appeal from the removal be required by law, the Council shall, by ordinance, provide an appellate procedure in conformance with the law. The Chief of Police may request an appeal by letter to the City Clerk within five days of the effective date of the removal.

Sec. 576. Acting and Temporary Chief of Police.

(a) The Chief of Police, by a letter to the Board of Police Commissioners, shall designate a person or persons who shall serve as Acting Chief of Police for those periods of time that the Chief of Police is out of the City or is temporarily unable to perform the duties of the office.

(b) The Board of Police Commissioners is authorized to appoint a temporary Chief of Police during a vacancy in the office and pending the regular appointment of a Chief of Police. The person appointed as temporary Chief of Police shall be entitled to compensation appropriate to the position of Chief of Police for the duration of the appointment. The length of the temporary appointment shall not exceed 12 months and shall terminate when a regular appointment is made. The appointment of a temporary Chief of Police shall terminate the authority of an Acting Chief of Police.

PUBLIC WORKS DEPARTMENT

Sec. 580. Public Works Department Powers and Duties.

The Department of Public Works shall have the following powers and duties:

(a) design, construct, excavate and maintain streets and public works improvements including but not limited to bridges, public parkways and rights-of-way, sanitary sewers and storm drains, water and sewer treatment facilities, landfills and public rights-of-way lighting facilities owned by the City;

(b) design and construct public buildings belonging to the City, except those under the jurisdiction of the Proprietary Departments and the Department of Recreation and Parks;

(c) dispose of solid waste; and

(d) perform other duties as may be assigned by ordinance, if not inconsistent with Section 514.

Sec. 581. Board of Public Works.

Members of the Board of Public Works shall devote their entire time to the duties of office. Subject to the Charter and applicable ordinances and law, the board shall have the power and duty to:

(a) set policy for and manage the Department of Public Works;

(b) establish procedures for the examination, consideration and preparation of requests for proposals or bids, and for the advertisement and establishment of the amount of the required

bond, all as provided by Sections 370 through 378 and related ordinances, for any work or improvements;

(c) approve the award of contracts;

(d) fix the time when work shall be commenced and completed in accordance with applicable law;

(e) exercise the power of eminent domain, subject to Council authorization, and lease or purchase property on behalf of the City for the construction and maintenance of public works projects;

(f) exercise the powers and duties imposed by law or delegated by the Council relating to the award of contracts for work specified in Section 580 and the determination of benefits, damages and costs incident to a proposed change or improvement of any public place, right-of-way or property belonging to the City and the making and levying of assessments upon property to cover the damages and costs;

(g) conduct hearings and hear appeals as authorized by ordinance relating to the work of the department, including hearings pertaining to special assessments;

(h) on its own initiative or upon complaint, investigate departmental operations and acts of employees and report findings to the Director of Public Works, the Mayor and the Council;

(i) approve specifications for public works construction projects;

(j) accept completed public works projects, provided that the board may delegate to the Director of Public Works the authority to accept projects involving less than one hundred thousand dollars (\$100,000) or such other amount prescribed by the board;

(k) make recommendations about short- and long-range public works plans and programs to the Mayor and Council; and

(l) annually present to the Council at its meeting in the second week of July, a report for the previous fiscal year stating the amount of proceeds from the sale of bonds, the purposes for which those proceeds have been expended, the amount expended, the balance in each bond fund and other information and suggestions as it deems appropriate.

The Board of Public Works shall have power to proceed with all such construction and maintenance, and to carry out any of the purposes herein mentioned from any funds under its control and available for such purposes; provided, that nothing in this section shall be construed to abridge the power of the Council to order any work or improvements and to provide the manner of paying therefor, such work or improvement, however, to be done under the superintendence and control of the Board of Public Works.

Sec. 582. Director of Public Works

There shall be a chief administrative officer of the Department of Public Works, known as the Director of Public Works, who shall be appointed and removed as provided in Section 508. Instead of those powers and duties set forth in Section 509, the director shall have the power and duty to:

(a) enforce all orders, rules and regulations adopted by the board;

(b) administer contracts;

(c) supervise and manage construction and maintenance work authorized by the board;

(d) approve those public works contracts within the authority delegated to the Director by the board or by ordinance;

(e) grant street encroachment and other permits necessary for the temporary use of City rights-of-way;

(f) make recommendations to the board about short- and long-range public works plans and programs;

(g) oversee the functions of departmental accounting and management-employee services including any bureaus charged with performing those functions, and issue instructions to, appoint, discharge, suspend and transfer the employees that perform those functions, all subject to the civil service provisions of the Charter;

(h) recommend to the board prior to the beginning of each fiscal year an annual departmental budget covering the anticipated revenues and expenditures of the department, conforming so far as practicable to the forms and dates provided in Article III in relation to the general City budget; and

(i) file with the board and the Mayor a written report on the work of the department on a regular basis as requested by the Mayor or board.

RECREATION AND PARKS DEPARTMENT

Sec. 590. Powers and Duties of the Department.

The Department of Recreation and Parks shall have the power and duty:

(a) to establish, construct, maintain, operate and control, wherever located:

(1) all parks of the City of Los Angeles;

(2) all recreational facilities, museums, observatories, municipal auditoriums, sports centers and all lands, waters, facilities or equipment set aside or dedicated for recreational purposes and public enjoyment; and

(3) all property acquired by it or assigned to its jurisdiction for public recreation.

(b) to design, construct and operate, lease, rent or sell concessions or privileges to be exercised for the benefit, education, amusement, convenience or enjoyment of the public, in connection with any function, site or facility under the jurisdiction of the department;

(c) to establish schedules of charges for special services;

(d) to promote public recreation and cooperate with other public agencies and organizations for that purpose; and

(e) to establish, maintain and operate playgrounds or other recreational facilities upon portions of public streets, under terms and conditions provided by ordinance.

Sec. 591. Board of Recreation and Park Commissioners.

The Board of Recreation and Park Commissioners shall have the power:

(a) to control all recreation and park sites;

(b) to control, appropriate and expend all money in the Recreation and Parks Fund and authorize the City Treasurer to invest any surplus funds under its control in accordance with Section 303(b); and

(c) to organize the work of the department into divisions and to appoint an administrative officer for each division or for any group of divisions.

Sec. 592. Chief Administrative Officer of Recreation and Parks.

The chief administrative officer of the Department of Recreation and Parks shall be appointed and removed as provided in Section 508.

Sec. 593. Financial Support.

(a) For the financial support of the Department of Recreation and Parks, there shall be appropriated an annual sum of not less than 0.0325% of assessed value of all property as assessed for City taxes.

(b) Additional appropriations may be made from the General Fund.

(c) All money derived from (a) or (b), plus all other sums received by the department shall be placed to the credit of the Recreation and Parks Fund.

Except as provided in Section 342 with regard to funds appropriated from the General Fund to the Recreation and Parks Fund, money in the Recreation and Parks Fund shall be used only for the financial support of the Department of Recreation and Parks.

Sec. 594. Control and Management of Recreation and Park Lands.

(a) **Management and Control.** The Department of Recreation and Parks shall operate, manage and control all property now or hereafter owned or controlled by the City for public recreation, including parks, and shall have power in the name of the City to acquire and take by purchase, lease, condemnation, gift, in trust or otherwise, any and all property necessary or convenient for recreation, including park purposes.

(b) **Acquisition of Property.** No real property shall be acquired by the City for recreation sites, including parks, unless first approved by the Board of Recreation and Park Commissioners.

(c) **Restrictions on Transfer of Dedicated Parks.** All lands heretofore or hereafter set apart or dedicated as a public park shall forever remain for the use of the public inviolate; but the board may authorize use of the lands for any park purpose, and for:

(1) Easements or rights-of-way for any work, improvement or structure necessary and convenient for giving service to the City or its inhabitants in connection with any public utility owned by the City. Under similar circumstances, similar permission may be given to any private public utility holding a franchise, and limited to the life of the franchise. These easements or rights-of-way shall be subject to regulation by ordinance.

(2) Leases to the County of Los Angeles or the State of California or the United States for periods not to exceed 50 years, of sites in any public park for the erection and maintenance of public buildings consistent with public park purposes.

(3) Taking and disposal of molding sand, or other natural resources under terms as the board may prescribe and in a manner as to work no substantial impairment of public use and enjoyment of the premises.

(4) Opening, establishment and maintenance of streets or other public ways in and through the park lands controlled by the board.

(d) **Transfer to Purposes other than Recreation and Park Purposes.** No sites under the management and control of the department shall be devoted or transferred to any other purpose in whole or in part, except in compliance with all of the following:

- (1) *Procedure.* Any transfer shall require a resolution of the board, approved by the Council by ordinance, incorporating the prescribed terms and conditions to be observed by the permittee. However, Council approval shall not be required for the granting of leases of property not immediately needed for the purposes of the department for a term not to exceed three years.
- (2) *Restrictions on Transfer.* No transfer shall be permitted if it would violate the provisions of subsection (c) of this section, or in any case where the proposed use violates a specific trust or dedication upon which the property was acquired.
- (3) *Requirement of Equivalent Property or Funds.* If property to be transferred to another use has been acquired from funds specifically provided for the Department of Recreation and Parks or its predecessors, the department shall be assigned the equivalent in property or funds as a condition of transfer of the property from its control, when required by the board.

(e) **Remaining Land Unsuitable for Park Use.** Where lands forming a portion of an existing public park have been removed from the jurisdiction of the board by reason of their dedication or use for public purposes incompatible with park use, the remaining lands, or any portion thereof, within the park shall not be subject to the provisions of subsection (c) of this section in the event that:

- (1) the board and Council find and determine that the remaining lands, or specific portion thereof, are unsuitable for further use as a public park; and
- (2) lands of an area at least equal to the lands found to be unsuitable for further use as a public park are acquired in the same portion of the City and set apart or dedicated as a public park.

Sec. 595. Lease of Facilities.

The Board of Recreation and Park Commissioners may lease for recreational purposes any municipal auditoriums, arenas, sports centers or related facilities subject to the following conditions:

- (a) The term of the lease shall not exceed 35 years. Leases in excess of five years shall be approved by the Council by ordinance.
- (b) The public must be entitled to use and enjoy the property or facility for the purposes for which it was acquired, constructed or completed and any lease shall require the lessee to operate the

property or facility so as to furnish the public with that use and enjoyment.

(c) The board may enter into the lease without inviting bids and may prescribe other terms and conditions as it deems appropriate.

Sec. 596. Leasing of Subsurface Space.

(a) Notwithstanding the provisions of Section 595, the Board of Recreation and Park Commissioners may lease, to the highest responsive and responsible bidder in accordance with Section 371, subsurface space under any public park or public grounds under its control subject to the following conditions:

- (1) The use will not breach the conditions under which the land has been deeded to the City.
- (2) The board finds that the works to be constructed will not result in material detriment to the purpose for which the land was dedicated or set aside by the City. The board's finding will become final and conclusive upon Council approval by ordinance.
- (3) The lease shall not exceed a term of 50 years.
- (4) The lease is for the construction and operation of a public parking structure, subway or subway station. The operation of a public parking structure shall include related incidental facilities and functions. The retail sale of gasoline, oil and accessories and the provision of service to private vehicles shall be prohibited except at the Pershing Square subterranean parking structure. This prohibition shall apply to the department and its lessees, sub-lessees, partners and franchisees.
- (5) The board shall prescribe the terms and conditions of the lease, and the proceeds shall be paid into the Recreation and Parks Fund.
- (6) The lease shall be approved by the Council by ordinance.

(b) The board may design, construct and operate subsurface parking structures under lands within its control, subject to subsection (a) (1) and (2) of this section. The revenue derived from the operation of the parking structures shall be paid into the Recreation and Parks Fund.

Sec. 597. Location of Police Training Facility.

Notwithstanding any other provisions of the Charter or ordinance, jurisdiction over that portion of Elysian Park described in Council File 70-5114 and supplements, containing approximately 21.464 acres which was used as of July 1, 1972, primarily as a police training facility, is transferred to the Department of Public Works for use as public buildings and grounds, including use as police training facilities and related purposes. Such portion shall, upon abandonment of the site as a police training facility, be transferred to the Department of Recreation and Parks and shall be dedicated as a public park.

ARTICLE VI PROPRIETARY DEPARTMENTS

GENERAL PROVISIONS FOR PROPRIETARY DEPARTMENTS

Sec. 600. Creation of Proprietary Departments and Boards.

(a) **Departments Created.** The following departments, which shall be known as the Proprietary Departments, are created:

Airports
Harbor
Water and Power

(b) **Head of Department.** Each Proprietary Department shall be under the control and management of a board of commissioners that shall be the head of the department.

(c) **Applicability.** Each Proprietary Department shall be governed by the following:

- (1) provisions specific to each department set forth in this Article;
- (2) these General Provisions for Proprietary Departments;
- (3) the General Provisions for Departments contained in Article V, to the extent not inconsistent with this Article; and
- (4) other provisions of the Charter applicable to departments and boards to the extent not inconsistent with this Article.

Sec. 601. Departmental Purposes.

The boards and general managers shall operate the Proprietary Departments for the following purposes, which shall be known as the Departmental Purposes:

Airports:	In connection with, or for the promotion and accommodation of air commerce and air navigation.
Harbor:	In connection with, or for the promotion and accommodation of maritime commerce, navigation, and fishery.
Water and Power:	In connection with, or for the production and delivery of water and electric power, and for the promotion of the conservation of water and power resources.

Sec. 602. Possession, Management and Control of Assets.

The board of each Proprietary Department shall have possession, management and control of all property and rights of every kind whatsoever:

- (a) conferred upon the department by the Charter;
- (b) purchased with funds under its control; or
- (c) received through ordinance, or with approval of the board, through other action of the Council or from any other source, if consistent with Departmental Purposes.

Sec. 603. Control of Departmental Funds.

(a) **Special Funds.** Each Proprietary Department shall have one or more special funds including accounts or subaccounts for the purpose of segregating its revenues from other money of the City.

(b) **Expenditures.** The board of each Proprietary Department shall have control over its special funds, consistent with other provisions of the Charter. For Departmental Purposes, a board shall have the power to appropriate and expend all money in the

department's special revenue funds and of all money derived from the sale of bonds of the department.

Sec. 604. General Managers.

(a) **Appointing Authority.** The board of each Proprietary Department shall appoint the general manager subject to confirmation by the Mayor and Council, and shall remove the general manager subject to confirmation by the Mayor. A general manager removed pursuant to the provisions of this section may appeal the removal to the Council in the manner provided in Section 508(e).

(b) **Annual Review.** The board of each Proprietary Department shall evaluate its general manager at least annually and shall set or adjust the compensation of the general manager within guidelines established by Council, after recommendations concerning those guidelines have been made to the Council by the Director of the Office of Administrative and Research Services. The board shall forward a copy of its performance evaluation and salary determination to the Mayor and Council.

(c) **Powers and Duties.** The powers and duties of general managers contained in Section 509 shall apply to general managers of the Proprietary Departments. Additionally, the board of each Proprietary Department may authorize its general manager to contract on behalf of the department where the contract does not involve payment or receipt of money or consideration reasonably valued in excess of a monetary limit provided by ordinance.

Sec. 605. Power to Grant Franchises, Concessions, Permits and Licenses and Enter Into Leases.

(a) **For Departmental Purposes.** Subject to any limitations imposed upon a specific proprietary board in this Article, each board shall have the power to grant and set the terms and conditions for any franchise, concession, permit, license, or lease concerning any property under its control that will further Departmental Purposes or anything incidental to those purposes and, with respect to the Harbor Department, will not be inconsistent with any trust upon lands held by the City.

(b) **For Non-Departmental Purposes.** The board of each Proprietary Department shall have the power to grant a license or to enter into a lease concerning property under its control for purposes other than Departmental Purposes, if the board finds in writing that:

- (1) the property to be licensed or leased is not presently needed for Departmental Purposes;
- (2) the grant of the license or lease will not interfere with Departmental Purposes; and
- (3) with respect to the Harbor Department, the license or lease is not inconsistent with any trust upon lands held by the City.

Sec. 606. Process for Granting Franchises, Permits, Licenses and Entering Into Leases.

Board action granting franchises, concessions, permits and licenses or approving leases shall be taken by order or resolution. If the board's order or resolution grants a franchise, permit or license or approves a lease for a term greater than five years, it shall be submitted to Council for its approval or disapproval. The

Council may, by ordinance, further define what constitutes a term of more than five years. Unless Council takes action disapproving the franchise, permit, license or lease within 30 days after submission of it to Council, the franchise, permit, license or lease shall be deemed approved. If Council does not approve the franchise, permit, license or lease, Council shall return it to the originating board for reconsideration and resubmission. Any order or resolution granting a franchise for a term of more than five years shall be published once in the same manner as ordinances of the City and shall take effect 30 days after publication.

Sec. 607. Limitations on Franchises, Concessions, Permits, Licenses and Leases.

Franchises, concessions, permits, licenses and leases shall be subject to further limitations specified in this Article for each Proprietary Department and the following:

(a) **Length.** The term shall not exceed 30 years or the term specified by applicable federal or state law, whichever is less. If Council makes a finding that a term longer than 30 years would be in the best interest of the City, Council may, by a two-thirds vote, subject to Mayoral veto, or three-fourths vote over the veto of the Mayor, authorize a term up to 50 years, or the maximum period allowed by any federal or state law, whichever is less.

(b) **Compensation Adjustments.** Every franchise, concession, permit, license, or lease shall include a procedure to adjust the compensation periodically but in no case shall the period between adjustments exceed five years.

Sec. 608. Harbor and Airport Regulation of Public Service and Public Utilities.

To the extent not preempted by federal or state law, the Board of Airport Commissioners and Board of Harbor Commissioners have the power to:

(a) regulate and control all public service and public utilities operated in connection with Departmental Purposes;

(b) to fix the proper franchise or license fees to be paid to the department by any public service or utility; and

(c) to fix and regulate the rates, tolls and charges to be charged and collected for services furnished by any public service or utility.

The board shall have the right to have reasonable access to and to examine all records showing the transactions, and financial condition of the operators of a public service or utility and to require reports from the operators as the board may prescribe. The amounts of the franchise or license fees to be paid to the department by any operator of a public service or utility, and the rates, tolls and charges to be charged and collected for services furnished or supplied by a public service or utility shall be fixed by the board by order, subject to approval or modification by the Council by ordinance.

Sec. 609. Revenue Bonds and Other Obligations.

(a) **Power to Issue Debt.** Each Proprietary Department shall have the power to borrow money and to issue bonds, refunding bonds, notes and other evidences of indebtedness (collectively referred to in this section as "Revenue Bonds") for any lawful purpose relating to the department payable from the revenues of the department and from any other money lawfully available to the department or under its control, in the form and manner approved by the board of the department. The Council shall adopt

procedural ordinance(s) (each a "Procedural Ordinance") which shall set forth the procedures under which Revenue Bonds may be issued. The Procedural Ordinance(s) shall require that a resolution of the board authorizing the issuance of Revenue Bonds be transmitted to the Council and Mayor for their approval or disapproval in the manner set forth in the Procedural Ordinance(s).

(b) **No Obligation of the General Revenues of the City.** No Revenue Bond issued or incurred by any department under this section shall constitute or evidence an indebtedness of the City or a lien or charge on any property or the general revenues of the City, but shall constitute and evidence an obligation of the applicable department payable only from the specified revenues and other money of the applicable department and the face of each Revenue Bond shall contain a legend to this effect.

(c) **Payment of Revenue Bonds.** As long as any Revenue Bonds issued or incurred under this section and payable out of all or a portion of the revenue of a department shall be outstanding and unpaid, the board of the department shall fix rates for service from the municipal works to which that revenue pertains. It shall collect charges to provide revenue which, together with the other available funds of the department, shall be at least sufficient to pay, as the same shall become due, the principal and interest on all Revenue Bonds so outstanding payable out of revenue, including premiums, if any, due upon the redemption of any of the Revenue Bonds, in addition to paying, as it shall become due, the necessary expenses of operating and maintaining the works, and all other obligations and indebtedness payable out of the revenue of the department. If at any time during the life of Revenue Bonds issued under this section, the Council is required to review any rates adopted by a board, the Council shall approve rates in an amount sufficient to meet all the revenue requirements of this section.

(d) **Competitive Bidding or Private Sale.** Revenue Bonds shall be sold pursuant to a competitive bidding process; however, Revenue Bonds may be sold by private sale or in any other manner acceptable to the department and the Council as authorized by a Procedural Ordinance, subject to the following conditions:

(1) The board of a department has authorized the sale of Revenue Bonds pursuant to private sale after written recommendation of the chief financial officer of the department stating the reasons why a private sale will benefit the department.

(2) Council, after receiving a report of the Director of the Office of Administrative and Research Services, has approved the private sale.

(3) Council has been provided an opportunity, as set forth in a Procedural Ordinance, to disapprove the selection by a department of the underwriting firm(s) for the private sale of Revenue Bonds.

(e) **Prohibition of Underwriter Gifts and Political Contributions.**

(1) No underwriting firm which, within the prior 12 months, made one or more gifts totaling fifty dollars (\$50) or more, or one or more political contributions totaling one hundred dollars (\$100) or more, to the Mayor, the City Attorney, any member of the Council, any member of the board of the department whose bonds are the subject of the sale, or

- any other City official having the authority to make or participate in making decisions concerning the sale, shall be selected by the Council or by a department as the underwriter for a sale of Revenue Bonds where the selection of the underwriting firm is made on a basis other than by competitive bidding (referred to hereafter as “noncompetitive sale”). An underwriting firm seeking selection shall cause one of its officers to certify under oath that no such gifts or contributions were made. That certification shall be filed with the City Clerk prior to the date on which a selection is made. If the selected underwriting firm made any of the gifts or contributions specified above, but the certification was nevertheless made, the underwriting firm and any other person responsible for the error in the certification shall be subject to the penalties provided for violation of Section 470.
- (2) No underwriting firm selected as the underwriter for a noncompetitive sale of Revenue Bonds shall make one or more gifts totaling fifty dollars (\$50) or more, or one or more political contributions totaling one hundred dollars (\$100) or more, to any official referenced in subsection (e)(1) during the 12 months after being so selected. Any person violating the provisions of this subsection shall be subject to the penalties provided for violations of Section 470.
- (3) A gift or contribution shall be considered as having been made by an underwriting firm if that gift or contribution was made by the firm itself; by any other business entity related to the firm as a parent, subsidiary or other related business entity; by any political action committee controlled or primarily financed by the firm or by a business entity related to the firm as a parent, subsidiary or other related business entity; by the president, chairperson of the board, chief executive officer, or chief operating officer of the firm; by any vice president, assistant vice president or managing director employed in the public finance unit of the firm; by any other employee of the firm who communicates with one or more City officers or employees for the purpose of influencing the City’s selection of an underwriter for a particular bond issue; or by any person owning a 10% or greater investment in the firm.
- (4) A contribution shall be considered as having been made to any of the officials referenced in subsection (e)(1) if it is made to the official or to any controlled committee of the official.
- (5) Any term used herein which is defined in the California Political Reform Act of 1974, as amended, or in the regulations of the California Fair Political Practices Commission, as amended, shall have the meaning set forth in those provisions.
- (6) No provision of subsection (e) shall require any person to do or refrain from doing any act which would violate federal law.
- (f) **Investment of Proceeds.** Proceeds of the Revenue Bonds may be invested in those obligations set forth in the applicable financing documents, if those obligations are authorized for the investment of money of the City, as provided in a Procedural Ordinance.
- (g) **Effect of Section on Issuance of Bonds.**
- (1) **Complete Authority to Issue Bonds.** This section and the Procedural Ordinance shall be complete authority for the issuance of Proprietary Department Revenue Bonds. No action or proceeding other than those required by this section or the Procedural Ordinance shall be necessary for the valid authorization and issuance of the Revenue Bonds.
- (2) **No Council Veto.** After the Council and Mayor approve the issuance of Revenue Bonds for a department as described in subsection (a), and subject to Council disapproval of a department’s selected underwriter for a noncompetitive sale as provided in subsection (d), the issuance of Revenue Bonds for a Proprietary Department shall not be subject to any further Council review including the veto provided in Section 245.
- (3) **Validity of Revenue Bonds.** The validity of Revenue Bonds reciting that they have been issued pursuant to this section shall not be affected by any provision or limitation contained in any other section of the Charter. Any required signatures to the Revenue Bonds issued pursuant to this section may be by facsimile or by autograph. Charter Sections 146, 146.1, 229, 229.1 and 239 existing on June 1, 1996 shall remain in full force and effect after the adoption of this section until the Council has adopted the Procedural Ordinance(s) provided for in this section.
- (4) **Section Applies Only to Proprietary Revenue Bonds.** The provisions of this section apply only to Revenue Bonds issued by Proprietary Departments under authority of this section.
- Sec. 610. Debt Accountability and Capital Improvement Plan.**
- Every two years, in conjunction with submittal of its annual budget, each Proprietary Department shall submit a debt accountability and major capital improvement plan to the Mayor, Council and Controller.
- DEPARTMENT OF AIRPORTS**
- Sec. 630. Board Composition.**
- The Board of Airport Commissioners shall consist of seven members appointed and removed as provided in Section 502. At least one member shall reside within the area surrounding Los Angeles International Airport and at least one member shall reside within the area surrounding Van Nuys Airport, as those areas are defined by ordinance.
- Sec. 631. Possession, Management and Control of Airport Assets.**
- The Board of Airport Commissioners shall have the possession, management and control of all airports, airport sites and all equipment, accommodations and facilities for aerial navigation, flight, instruction and commerce belonging to the City. The lands, property, facilities, and interests therein, under the management, supervision and control of the board shall be known as the Airport Assets.
- Sec. 632. Powers and Duties of the Board.**
- The board shall have the power and duty to:
- (a) **Rates and Charges.** Fix and collect rates and charges for the use of the Airport Assets and any other service provided by the department.

(b) **Rules and Regulations.** Subject to the powers of the United States respecting commerce, make and enforce all necessary rules and regulations governing the use and control of City owned or controlled airports located inside and outside of the City and the use of airways and waterways proximate to these airports incident to aerial navigation. Regulations adopted by the board shall be approved by ordinance that shall prescribe the penalties for the violation of these rules and regulations. These rules and regulations may include, but are not limited to, the following subjects:

- (1) the ascent, landing, mooring, movement, maintenance, operation or use of all apparatus for aerial navigation and flight, or convenient or necessary in connection with those operations; and
- (2) the design, construction, maintenance, use, condition and operation of any utility, machine, building, structure or improvement on any airport, and control of excavation, obstructions and traffic on or in the airports.

(c) **Development of the Airports.** Purchase, lease, acquire, condemn, design, erect, maintain, improve, repair and operate all property, improvements, utilities, equipment, supplies or facilities as it may deem necessary or convenient for Departmental Purposes. The power of condemnation shall only be exercised with approval of the Council.

Sec. 633. Powers and Duties of the General Manager.

In addition to those powers and duties prescribed in Section 604, the general manager of the Department of Airports shall have the power and duty to:

- (a) enforce all orders, rules and regulations adopted by the board;
- (b) supervise and manage the design, construction, maintenance and operation of all work or improvements authorized or ordered by the board;
- (c) designate and assign space for the use of aircraft at the established rates or charges and subject to the rules and regulations of the department;
- (d) designate and assign space in any warehouse, shop, field, runway, hangar or like facility at the established rates or charges and subject to the rules and regulations of the department;
- (e) revoke any assignment made under subsection (c) or (d) of this section, in accordance with Section 634(b); and
- (f) carry out all powers and duties of the department delegated by the board.

Sec. 634. Limitations upon Permits and Licenses.

In addition to the limitations set forth in Section 607, permits or licenses shall be subject to the following:

- (a) **Reservation for Departmental Purposes.** Every assignment of space shall reserve to the department the right to use the space or facility for Departmental Purposes when the space is not required for the use of the grantee.
- (b) **Revocation Upon Notice.** Every assignment of space shall be revocable without compensation to the grantee, upon notice.
- (c) **Common Use Requirement.** Every assignment of space shall include a provision that use of airport facilities shall be in common with others, but only to the extent necessary to exercise the rights granted by the permit or license.

Sec. 635. Airport Revenue Fund.

(a) **Creation of Fund.** All fees, charges, rentals and revenue from every source collected by the Department of Airports in connection with its possession, management and control of the Airport Assets shall be deposited in the City Treasury to the credit of the Airport Revenue Fund. However, there shall be excluded from the Airport Revenue Fund any revenues received or to be received for the payment of any special purpose indebtedness of the Department payable solely out of the monies received or collected by the Department for the use or operation of special purpose facilities. This fund shall be exempt from the end of year transfer provisions of Section 344.

The Board may create for each airport, heliport and related facility operated by the Department, one or more separate revenue and expense accounts within the Airport Revenue Fund. The Board may place in said account all or a portion of the revenues, income and expenses derived from or allocated to one or more airports owned, operated or controlled by the Department. If separate accounts are created in the Airport Revenue Fund, the Board may create corresponding separate accounts in the Maintenance and Operation Reserve Fund. With respect to one or more airports, the Board may choose to fund Maintenance and Operation Reserve Fund and to pay debt service and maintenance and operations expenses attributable to said airport or airports solely from the monies placed in a specified account or accounts in the Airport Revenue Fund or may choose to pay such amounts and expenses from any monies held in the Airport Revenue Fund or in any account or subaccount thereof, all in such manner as the Board shall determine. Notwithstanding anything to the contrary herein, if separate accounts are created in the Airport Revenue Fund and/or Maintenance and Operation Reserve Fund, the Board shall have the power to direct that such monies can be used solely for a specified purpose related to the airport, heliport and related facility from which such monies are derived or to which such monies have been allocated. The implementation or subsequent modification of any of the foregoing provisions of this paragraph shall be subject to approval by ordinance.

(b) **Use of Funds.** The money in the Airport Revenue Fund may not be appropriated or expended for any purpose except the following:

- (1) **Operation and Maintenance.** For the necessary expenses of operating the Department of Airports, including the operation, promotion and maintenance of the Airport Assets for Departmental Purposes.
- (2) **Development of Assets.** For the acquisition, construction, completion and maintenance of airport improvements, works, utilities, facilities, services and aircraft for Departmental Purposes, and for the acquisition or taking by purchase, lease, condemnation or otherwise of any property, real or personal, or other interest necessary or convenient for Departmental Purposes.
- (3) **Payment of Debt.** For the payment of the principal and interest of bonds issued by the department or by the City for Departmental Purposes.
- (4) **Pension Contributions.** For defraying the expenses of any pension or retirement system applicable to the employees of the department.
- (5) **Reimbursements.** For reimbursement to another department or office of the City on account of services

rendered, or materials, supplies or equipment furnished to support Departmental Purposes.

- (6) **Discretionary Transfer to General Fund.** For transfer to the General Fund of money determined by the board to be surplus, but only to the extent not inconsistent with federal or state law, regulation or contractual obligations.

Sec. 636. Airport Police.

The Airport Police shall remain under the independent and autonomous control of the Department of Airports.

HARBOR DEPARTMENT

Sec. 650. Board Composition.

The Board of Harbor Commissioners shall consist of five members appointed and removed as provided in Section 502. The board shall include at least one member who resides within the area surrounding the Harbor District, as that area is defined by ordinance.

Sec. 651. Possession, Management and Control of the Harbor Assets.

(a) The Board of Harbor Commissioners shall have the possession, management and control of all navigable waters and all tidelands and submerged lands, whether filled or unfilled, situated below the line of mean high tide northerly and easterly of the United States government breakwater at Los Angeles Harbor and within the limits of the City of Los Angeles; and all harbor and port improvements, works, utilities, facilities and watercraft owned, controlled or operated by the department, as well as those properties referred to in Section 602(b) and (c).

The lands and waters, and interests therein, under the possession, management and control of the Board of Harbor Commissioners shall be known as the Harbor District. The Harbor District and all harbor and port improvements, works, utilities, facilities and watercraft owned, controlled, or operated by the department shall be known as the Harbor Assets.

(b) **Prohibition of Sale.** The City of Los Angeles and the Harbor Department shall not grant, sell, convey, alienate, transfer or otherwise dispose of any of the right, title or interest of the City in and to the tidelands and submerged lands of the Harbor District, or any part thereof; except that grants of these lands may be made to the State of California or to the United States for public purposes, when approved by a majority vote of the registered voters of the City voting upon the question.

(c) **Public Use of Water Frontage.**

(1) **Reserved Space.** Not less than ten thousand feet of the water frontage of Los Angeles Harbor, linear measurement, measured along the United States harbor lines, together with the necessary coterminous and adjacent tidelands and submerged lands as may be determined by the board and approved by the Council by ordinance, owned or controlled by the City, are hereby forever reserved for public use to be improved, controlled, maintained and operated by the City.

(2) **Included Public Uses.** The following uses are considered consistent with the public use requirement of subsection (c)(1) above:

- (A) The assignment of berths or landings for the use of vessels at any wharf located in the reserved portion of the Harbor District if the assignment reserves to the

City the right to use the wharf or other facility when the assigned space is not required for the use of the permittee or licensee.

- (B) The assignment of space in any warehouse, elevator, or like facility operated by the City, located in the Harbor District at the established rates for the use of these facilities.

Sec. 652. Powers and Duties of the Board.

The board shall have the power and duty to:

(a) **Rules and Regulations.** Make and enforce all necessary rules and regulations governing the maintenance, operation and use of the Harbor District, and enforce penalties for the violation of those rules and regulations.

(b) **Harbor Traffic.** Regulate and control the piloting, anchoring, mooring, towing and docking of all vessels and watercraft in the Harbor District.

(c) **Control Over Harbor Facilities.** Regulate and control the construction, maintenance, operation and use of any railroad, wharf, warehouse or other facility, utility, structure or improvement used in connection with the Harbor District.

(d) **Dredging.** Regulate and control all dredging, filling and excavating in the Harbor District.

(e) **Rates.** Fix and collect rates and charges for the use of the Harbor Assets, pilotage and towage, and any other service provided by the department.

(f) **Development of the Harbor District.** Acquire, provide for, construct, maintain and operate all improvements, utilities, structures, watercraft, facilities and services for Departmental Purposes and to acquire and take, by purchase, lease, condemnation or otherwise, in the name of the City, any property, real or personal, or any interest therein, and to designate the site for any public buildings, structures or facilities in the Harbor District. The power of condemnation shall only be exercised with the approval of Council.

Sec. 653. Rates, Rules and Regulations.

(a) **Council Approval.** The board, by order, shall make and enforce rules and regulations of general application, and fix, regulate and collect rates and charges. These orders must be approved by the Council by ordinance before they become effective.

(b) **Temporary Rules or Rates.** Notwithstanding subsection (a), the board shall have the power to enact, suspend or modify any rule, regulation, rate or charge, without Council approval, for a period not to exceed 90 days.

(c) **Penalties.** The Council shall, by ordinance, prescribe penalties for violation of the provisions of a rule or regulation adopted under this section. The Council may provide that violation constitutes a misdemeanor, and may declare penalties that include a fine not to exceed the maximum amount provided by the general laws of the state or imprisonment not exceeding six months or both.

Sec. 654. Limitations on Franchises, Permits, Licenses or Leases.

In addition to the limitations set forth in Section 607, franchises, permits, licenses or leases shall be subject to the following:

- (a) **Maximum Use of Water Frontage.**

- (1) **Board Approval Required.** Unless approved by a four-fifths vote of the board and approved by a two-thirds vote of Council, no franchise, permit, license or lease shall be made to any one person, firm or corporation to use in excess of 3,000 feet of the water frontage, linear measurement, measured along United States harbor lines of the Harbor District.
- (2) **Automatic Termination for Violation.** No assignment, transfer, gift, hypothecation, or grant of control of a franchise, permit, license, or lease shall be valid for any purpose unless first approved by the board. Any franchise, permit, license or lease shall be terminated by operation of law if the holder of it attempts to assign, transfer, sublease, give, hypothecate or grant it and the result would be any usage by another person, firm or corporation of more than the 3,000 foot limitation described in subsection (a)(1).
- (b) **Prohibition on Leasing Harbor Property as Excess.** No wharf, dock, pier, mole or transit shed owned or controlled by the City shall ever be leased for non-departmental purposes under Section 605(b).
- (c) **Revocation Upon Notice.** Every assignment of a berth or landing, or of space in any warehouse, elevator or like facility operated by the City, or grant of a revocable permit shall be revocable by the general manager, without compensation to the grantee or lessee, upon notice.

Sec. 655. Powers and Duties of the General Manager.

In addition to those powers and duties described in Section 604, the general manager of the Harbor Department shall have the power and duty to:

- (a) enforce all orders, rules and regulations adopted by the board relating to regulation, operation or control of the Harbor District;
- (b) supervise and manage the design, construction, maintenance and operation of all work or improvements authorized or ordered by the board;
- (c) designate and assign berths or landings for the use of vessels at any wharf or like facility at the established rates or charges, subject to the rules and regulations of the department;
- (d) designate and assign space in any warehouse, elevator or similar facility at the established rates or charges and subject to the rules and regulations of the department;
- (e) subject to approval of the board, grant revocable permits to use the lands and waters, or interests therein in the Harbor District, or any structure or appurtenance thereto, for any and all purposes which shall not interfere with commerce or navigation, and are not inconsistent with any trusts upon which the land may be held by the City;
- (f) revoke any assignment made under subsection (c), (d), or (e) of this section in accordance with Section 654(c); and
- (g) carry out all powers and duties of the department delegated by the board.

Sec. 656. Harbor Revenue Fund.

- (a) **Creation of Fund.** All fees, charges, rentals and revenue from every source collected by the Harbor Department in connection with its possession, management and control of the Harbor District and Harbor Assets, shall be deposited in the City Treasury to the credit of the Harbor Revenue Fund.

(b) **Use of Funds.** The money in the Harbor Revenue Fund shall not be appropriated or used for any purposes except the following:

- (1) **Operation and Maintenance.** For the necessary expenses of operating the Harbor Department, including the operation, promotion and maintenance of the Harbor Assets for Departmental Purposes.
- (2) **Development of Assets.** For the acquisition, construction, completion and maintenance of Harbor Assets for Departmental Purposes, and for the acquisition or taking by purchase, lease, condemnation or otherwise of property, real or personal, or other interest necessary or convenient for Departmental Purposes.
- (3) **Payment of Bonds.** For the payment of the principal and interest of bonds issued by the department or by the City for Departmental Purposes.
- (4) **Pension Contributions.** For defraying the expenses of any pension or retirement system applicable to the employees of the department.
- (5) **Reimbursements.** For reimbursements to another department or office of the City on account of services rendered, or materials, supplies or equipment furnished to support Departmental Purposes.

Sec. 657. Port Police.

The Los Angeles Port Police shall remain under the independent and autonomous control of the Harbor Department.

DEPARTMENT OF WATER AND POWER

Sec. 670. Board Composition.

The Board of Water and Power Commissioners shall consist of five members appointed and removed as provided in Section 502.

Sec. 671. The Los Angeles River.

The City of Los Angeles shall continue in the ownership and enjoyment of all the rights to the water of the Los Angeles River, vested in it and its predecessors, including the Pueblo of Los Angeles, and is hereby declared to have the full, free and exclusive right to all the water flowing in the river and also the exclusive ownership of, and the exclusive right to develop, economize, control, use and utilize all the water flowing beneath the surface in the bed of the river at any point from its sources to the intersection of the river with the southern boundary of the City.

Sec. 672. Possession, Management and Control of Water and Power Assets.

The Board of Water and Power Commissioners shall have the possession, management and control of:

- (a) **Water and Water Rights, Lands, and Facilities.** Whether situated inside or outside of the City or the State of California, all the water and water rights of the Los Angeles River, all other water or water rights of every nature and kind owned or controlled by the City, and all the lands, rights-of-way, sites, facilities and property used for the capture, transportation, distribution and delivery of water for the benefit of the City, its inhabitants and its customers. The water and water rights, lands, rights-of-way, sites, facilities and other interests of the City related to its water business under the possession, management and control of the board shall be known as the Water Assets.

(b) **Electric Energy Rights, Lands and Facilities.** All the electric energy rights, lands, rights-of-way, sites, facilities and property used for the generation, transportation, distribution and delivery of power for the benefit of the City, its inhabitants and its customers. The electric energy rights, lands, facilities and all other interests of the City related to its energy business under the possession, management and control of the board shall be known as the Power Assets.

Sec. 673. Water and Water Rights.

(a) **Los Angeles River.** The City shall not sell, lease or otherwise dispose of the City's rights in the waters of the Los Angeles River, in whole or in part.

(b) **Other Water and Water Rights.** Except as provided in this Article, no other water or water rights owned or controlled by the City shall ever be sold, leased or disposed of, in whole or in part, without the assent of two-thirds of the registered voters of the City voting on the proposition, and no water shall ever be sold, supplied or distributed to any person or corporation other than to municipalities for resale, rental or disposal to consumers for their own use.

(c) **Exceptions.** To the extent authorized in Section 677, the prohibitions in subsection (b) shall not apply to the ordinary sale and distribution of water or reclaimed water to City inhabitants for their own use, the supply or distribution by the City of surplus water or reclaimed water outside the City, or the exchange of water with any public agency.

Sec. 674. Power Contracts.

(a) Subject to approval by ordinance, the board shall have the power to contract with the United States or any of its agencies, any state or state agency, and any corporation, public or private, located inside or outside of the City or State of California:

- (1) For the construction, ownership, operation, and maintenance of facilities for the generation, transformation, and transmission of electric energy, subject to the following:
 - (A) Any contract entered into under this subsection may provide for a sharing of the use and benefits and of the capital charges and other obligations associated with the facilities.
 - (B) The term of any contract entered into under this subsection is not subject to the term limitations specified in Section 607(a) and may extend over the useful life of the facilities constructed, purchased or developed.

- (2) For the sale, purchase, exchange or pooling of electric energy or electric generating capacity.

(b) The board may renew, without Council approval, any contract with the United States existing as of December 12, 1940 concerning the delivery of electric energy to the City and the customers of the department from the Hoover Dam electric generating facility.

Sec. 675. Powers and Duties of the Board.

(a) **Rules and Regulations.** The board shall have the power and duty to make and enforce all necessary rules and regulations governing the construction, maintenance, operation, connection to and use of the Water and Power Assets for Departmental Purposes.

(b) **Rates and Charges.** The board shall have the power and duty to:

- (1) regulate and control the use, sale and distribution of water, reclaimed water, surplus water, electric energy and surplus electric energy owned or controlled by the City;
- (2) grant permits for connections with the water or electric works of the City and fix the charges for these connections;
- (3) fix the rates to be charged for water, reclaimed water, surplus water, electric energy or surplus electric energy for use inside or outside the City in accordance with Section 676; and
- (4) prescribe the time and the manner of payment for the collection of the rates and charges for water and electric energy.

(c) **Development of the Water and Power Assets.** The board shall have the power and duty to acquire, provide for, construct, extend, maintain and operate all improvements, utilities, structures, facilities and services as it may deem necessary or convenient for Departmental Purposes.

(d) **Real Estate Interests.**

- (1) The board shall have the power and duty to acquire and take, by purchase, lease, condemnation or otherwise, in the name of the City, any and all property, real or personal, or any interest therein, situated inside or outside the City or State of California, that may be necessary or convenient for Departmental Purposes. The power of condemnation shall only be exercised with the approval of Council.
- (2) Subject to the water and water rights of the City set forth in Section 673, no real property or any rights or interests in real property held by the board shall be sold, leased or otherwise disposed of, or in any manner withdrawn from its control, unless by written instrument authorized by the board, and approved by the Council.

(e) **Incidental Authority.** The board also shall also have the power to:

- (1) enter into agreements with department customers to engage in co-generation projects;
- (2) finance the sale and use of systems, equipment, devices or materials designed to conserve the use of water or electric energy;
- (3) purchase, sell or exchange by-products of electrical power generation such as steam, hot water, chilled water or other thermal energy products;
- (4) advertise its products and services to increase any of its businesses; and
- (5) dispose, from time to time, of personal property, that is no longer necessary or suitable for the use of the Department.

Sec. 676. Rate Setting.

(a) **Rate Setting Procedure.** Subject to approval by ordinance, rates for water, reclaimed water, surplus water, electric energy and surplus energy shall be fixed by the board from time to time as necessary. Except as otherwise provided in the Charter, rates shall be of uniform operation for customers of similar circumstances throughout the City, as near as may be, and shall be fair and reasonable, taking into consideration, among other things:

- (1) the nature of the uses;
- (2) the quantity supplied; and

(3) the value of the service.

The rates inside the City may be less, but not greater, than the rates outside the City for the same or similar uses.

(b) **Individual Power Contracts.** Rates for electric energy may be negotiated with individual customers, provided that these rates are established by binding contract, contribute to the financial stability of the electric works and are consistent with procedures established by ordinance.

Sec. 677. Sale or Exchange of Water and Power.

The board shall have the power:

(a) **Surplus Water.** To supply and distribute any surplus water owned or controlled by the City and not required for the use of consumers served by the City within its limits:

- (1) to consumers outside the City for their own use; and
- (2) to municipalities outside the City for municipal uses, or for resale, disposal or distribution to consumers within those municipalities, subject to the following:
 - (A) Any contract for the supply or distribution of surplus water shall be subject to the paramount right of the City, at any time, to discontinue the contract, in whole or in part, and to take, hold and distribute, the surplus water for the use of the City and its inhabitants.
 - (B) Contracts for supplying surplus water by the City to other municipalities outside the City may be made by the board for periods not exceeding 15 years, and upon terms and conditions set by the board and approved by ordinance. Any contract shall include the right to terminate the contract upon three years written notice to the municipality that the water supplied under the contract is required for the City and its inhabitants.
 - (C) Prior to execution, the contract must be assented to by a majority of the registered voters of the City voting on the question at a regular or special election.

(b) **Exchange of Water.** To enter into contracts with any public agency for the exchange of water as long as the water exchanged is replaced in full to the City within a reasonable period set by the board.

(c) **Reclaimed Water.** To supply and distribute reclaimed water to consumers served by the City within its limits, to consumers outside the City for their use, and to public agencies outside of the City for public uses and for resale, disposal or distribution to consumers within the public agency's jurisdiction.

(d) **Surplus Energy.** To supply and distribute or exchange any surplus electric energy, owned or controlled by the City and not required for the use of consumers served by the City within its limits, to any person or entity whether located inside or outside of the City.

Sec. 678. Powers and Duties of the General Manager.

In addition to the powers described in Section 604, the general manager of the department shall have the power and duty to:

- (a) enforce all orders, rules and regulations adopted by the board;
- (b) supervise and manage the design, construction, maintenance and operation of all work or improvements authorized or ordered by the board; and
- (c) carry out all powers and duties of the department delegated by the board.

Sec. 679. Water and Power Revenue Funds.

(a) **Water Revenue Fund.** All revenue from every source collected by the department in connection with its possession, management and control of the Water Assets of the City shall be deposited in the City Treasury to the credit of the Water Revenue Fund.

(b) **Power Revenue Fund.** All revenue from every source collected by the department in connection with its possession, management and control of the Power Assets of the City shall be deposited in the City Treasury to the credit of the Power Revenue Fund.

(c) **Use of Funds.** The money in the Water Revenue Fund and Power Revenue Fund may not be appropriated, transferred or expended for any purposes except the following:

- (1) **Operation and Maintenance.** For the necessary expenses of operating the department, including the operation, promotion and maintenance of the Water and Power Assets for Departmental Purposes.
- (2) **Retirement of Indebtedness.** For the payment of the principal and interest, due or coming due during the fiscal year in which the revenues are received, or are to be received, upon outstanding notes, certificates or other evidences of indebtedness issued against revenues from the Water or Power Assets or bonds or other evidences of indebtedness of the department.
- (3) **Development of Assets.** For the necessary expenses of constructing, extending and improving the Water or Power Assets, including the purchase or condemnation of lands, water rights and other property for Departmental Purposes.
- (4) **Reimbursements.** For reimbursement to another department or office of the City on account of services rendered, or materials, supplies or equipment furnished to support Departmental Purposes.
- (5) **Promotion of Business.** For the promotion of any of its products or services.
- (6) **Promotion of Conservation.** For the development, or promotion or use of systems, equipment, devices or materials by department customers that conserve utilization of water, electric energy and related departmental services.
- (7) **Employee Benefits.** For defraying the expenses of any pension or retirement system and health or other benefits applicable to the employees of the department.
- (8) **Bond Reserve Funds.** For establishing and maintaining a reserve fund to insure the payment at maturity of the principal and interest on all bonds now outstanding or hereafter issued for Departmental Purposes and the money set aside and placed in these funds shall remain in the funds until expended and shall not be transferred to the Reserve Fund of the City.
- (9) **General Fund Transfers.** To be transferred to the City General Fund as provided in Section 344.

Sec. 680. Other Enterprises.

(a) **Entry into Any Other Business.** Notwithstanding any provision in the Charter to the contrary, the Council, upon making a finding that it is in the best interests of the City, may by ordinance authorize the department to engage in any lawful business enterprise that is in the best interests of the City's

inhabitants and that will not interfere with the department's role as a provider of water and power to the City's inhabitants.

(b) **Entry into Public Utility Competition.** Without limiting the provisions of subsection (a), the Council may by ordinance adopted by a two-thirds vote and approved by the Mayor, or passed by three-fourths vote of the Council over the veto of the Mayor, authorize the department to provide electricity service or any other service, which may be provided by another utility or direct competitor to any person or entity, whether situated inside or outside of the City or the State of California.

(c) **Prohibition of Entry into Water Service Outside Service Area.** Water service or products that would be provided outside the department's retail service area are specifically excluded from the provisions of this section.

(d) **No Limitation on Department.** Nothing in this section limits any right, power or authority granted to the department or to the board elsewhere in the Charter.

Sec. 681. Division of Departmental Functions.

(a) **Division.** Notwithstanding any provision in the Charter to the contrary, the board shall have the power to divide the

functions of the department into two divisions. A Division of Water Services shall carry out the Departmental Purposes associated with water and a Division of Electric Services shall carry out the Departmental Purposes associated with electric energy. Each division shall be directed by a general manager appointed, removed and evaluated, and vested with the same powers and duties provided in Sections 604 and 678.

(b) **Consolidation.** Upon the division of departmental functions provided in subsection (a), the board shall have the power to discontinue the divisions and consolidate the functions of the department under the direction of a single general manager.

Sec. 682. Health Benefits.

The Board of Water and Power Commissioners may provide by order or resolution for health insurance and similar benefits to active employees and department retirees. The board shall determine eligibility and required contributions and other terms and conditions in its order or resolution establishing or modifying these benefits.

ARTICLE VII
CITY ETHICS COMMISSION; SPECIAL PROSECUTOR

Sec. 700. City Ethics Commission.

(a) **Establishment.** There shall be a City Ethics Commission that shall have the powers, duties and responsibilities set forth in this Article and elsewhere in the Charter. The commission shall have five members, each of whom shall be a part-time commissioner.

(b) **Appointment.** The Mayor, the City Attorney, the Controller, the President of the Council and the President Pro Tem of the Council shall each appoint one member to the commission. All appointments shall be subject to confirmation by a majority vote of the Council. A President and Vice President of the commission shall be selected by the commission and shall serve in those capacities as set forth in Section 503.

(c) **Terms of Office.** The members of the commission, including the president, shall serve staggered five-year terms beginning on July 1 and ending on June 30. No member who has served a complete five-year term shall be eligible for reappointment.

(d) **Qualifications.** Each member of the commission shall be a registered voter of the City. During his or her tenure, neither a member of the commission nor its Executive Director shall hold any other public office, participate in or contribute to a City election campaign or to a City official running for any elective office, or employ or be employed as a person required to register as a lobbyist with the City of Los Angeles. Neither a member of the commission nor its Executive Director shall seek election to any City office concerning which the commission has made a decision during the term of the commissioner or Executive Director unless the election for that office is to be held at least two years following the expiration of the term of office of the commissioner or Executive Director.

(e) **Removal.** Members of the commission may be removed by the Mayor, with the concurrence of the Council by majority vote, or by a two-thirds vote of the Council for substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office or violation of this Article, after written notice of the grounds on which removal is sought and an opportunity for a reply.

(f) **Vacancies.** Appointments to fill vacancies on the commission shall be made within 30 days by the same appointing authority who appointed the prior holder of the position. Appointments to fill vacancies shall be for the unexpired term of the member whom the appointee succeeds. A vacancy or vacancies shall not impair the right of the remaining members to exercise the powers of the Commission.

(g) **Quorum.** Three members shall constitute a quorum, and the concurring vote of at least three members shall be required to take any action.

(h) **Compensation; Expenses.** Members of the commission shall be compensated in the same manner and at the same rate as provided by Section 501. The members of the commission shall be reimbursed for expenses incurred in the performance of their official duties.

Sec. 701. Executive Director, Commission Staff and Delegation of Authority.

(a) The Commission shall appoint and has the authority to discharge an Executive Director, who shall act in accordance with commission policies and regulations and with applicable law. The Executive Director shall serve at the will of the commission, shall not be subject to civil service provisions, and shall have no property interest in his or her employment. The salary of the Executive Director shall be set by the Council, subject to approval of the Mayor and shall be based on a recommendation submitted by the Director of the Office of Administrative and Research Services after a review and analysis of the responsibilities and authority vested in the position. The Executive Director shall not serve in that capacity for more than ten years.

(b) The Executive Director shall appoint and has the authority to discharge commission staff members and prescribe their duties. Non-clerical personnel of the commission shall serve at the will of the Executive Director, shall not be subject to civil service provisions, and shall have no property interest in their employment.

(c) The commission may delegate authority to the Executive Director to act on behalf of the commission between meetings of the commission, except that rules, regulations and adjudicatory decisions can only be acted upon by the commission.

Sec. 702. Duties and Responsibilities of the Ethics Commission.

The commission shall have responsibility for the impartial and effective administration and implementation of the provisions of the Charter, statutes and ordinances concerning campaign financing, lobbying, conflicts of interest and governmental ethics.

The City Ethics Commission shall have the following duties and responsibilities:

(a) to receive documents required to be filed pursuant to, and to otherwise administer, the provisions of Section 470 and to conduct audits as otherwise set forth in that Section;

(b) to receive documents required to be filed pursuant to, and to otherwise administer, the provisions of the City's municipal lobbying ordinance;

(c) to act as the filing officer and to otherwise receive documents in any instance where the City Clerk would otherwise be authorized to do so pursuant to Chapters 4 and 7 of the California Political Reform Act of 1974 (Government Code Section 81000, et seq.), as amended;

(d) to audit disclosure statements and other relevant documents and investigate alleged violations of state law, the Charter and City ordinances relating to limitations on campaign contributions and expenditures, lobbying, governmental ethics and conflicts of interest and to report the findings to the City Attorney and other appropriate enforcement authorities. Audits shall be conducted of every candidate receiving public matching funds and may be conducted of other candidates and committees involved in City elections;

(e) to provide assistance to agencies and public officials in administering the provisions of the Charter and other laws relating to campaign finance, conflicts of interest and governmental ethics;

(f) to make recommendations to the Mayor and the Council concerning campaign finance reform, lobbying, governmental ethics and conflicts of interest and to report to the Council every three years concerning the effectiveness of these laws;

(g) to maintain a whistle-blower hot line;

(h) to annually adjust the limitation and disclosure thresholds required by City law to reflect any increases or decreases in the Consumer Price Index. Adjustments shall be rounded off to the nearest hundred dollars for the limitations on contributions and the nearest thousand dollars for the limitations on expenditures and the matching funds provisions of relevant ordinances;

(i) to assist departments in developing their conflict of interest codes as required by state law;

(j) to advocate understanding of the Charter, City ordinances and the roles of elected and other public officials, City institutions and the City electoral process;

(k) to have full charge and control of its office, to be responsible for its proper administration, to submit annually a proposed budget and to expend the funds of the office, all as otherwise prescribed by law; and

(l) to receive grants, gifts and appropriations, subject to the approval of the Council.

Sec. 703. Rules and Regulations.

(a) The commission may adopt, amend and rescind rules and regulations, subject to Council approval without modification, to carry out the purposes and provisions of the Charter and ordinances of the City relating to campaign finance, conflicts of interest, lobbying, and governmental ethics and to govern procedures of the commission.

(b) Within 60 days after a rule or regulation is adopted by the commission, the Council shall hold a public hearing concerning the matter and act to approve or disapprove the rule or regulation in the form approved by the commission by ordinance. If the Council fails to disapprove within the 60 day period, the rule or regulation shall be presented to the Mayor for approval or veto, and to the Council for override of the Mayor's veto. If approved by the Mayor, or the Mayor fails to act, or approved by the Council on override of the Mayor's veto, the rule or regulation shall have the force of law. Violation of the rule or regulation shall be subject to those penalties and remedies as may be provided.

Sec. 704. Additional Duties.

The commission shall have the following additional duties, which may be exercised by motion or order:

(a) Prescribe forms for reports, statements, notices and other documents required by the Charter, ordinances or other laws relating to campaign financing, conflicts of interest, lobbying or governmental ethics.

(b) Prepare and publish manuals and instructions setting forth methods of bookkeeping, preservation of records to facilitate compliance with and enforcement of the above laws, and explaining applicable duties of persons and committees.

(c) Develop an educational program consisting of the following components:

(1) seminars, when deemed appropriate, to familiarize newly elected and appointed officers and employees, candidates for elective office and their campaign treasurers, and lobbyists with City, state and federal ethics laws and the

importance of ethics to the public's confidence in municipal government.

(2) annual seminars for top-level officials, including elected officers and commissioners, to reinforce the importance of compliance with and to inform them of any changes in the law relating to conflicts of interest and governmental ethics.

(3) a manual that summarizes, in simple, non-technical language, ethics laws and reporting requirements applicable to City officers and employees, instructions for completing required forms, questions and answers regarding common problems and situations, and information regarding sources of assistance in resolving questions. The manual shall be updated when necessary to reflect changes in applicable City, state and federal laws governing the ethical conduct of City employees.

Sec. 705. Requests for and Issuances of Opinions; Advice.

(a) Any person may request the commission to issue a written opinion with respect to his or her duties under provisions of the Charter or any ordinance relating to campaign finance, conflicts of interest, lobbying or governmental ethics. The commission shall, within 14 days, either issue a written opinion or advise the person who made the request whether an opinion will be issued. No person who acts in good faith on a written opinion issued to him or her by the commission shall be subject to criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. The commission's opinions shall be public records and may from time to time be published.

(b) Any person may request the commission to provide written advice with respect to the person's duties under provisions of the Charter or any ordinance relating to campaign finance, conflicts of interest, lobbying, or governmental ethics. Advice shall be provided within 21 working days of the commission's actual receipt of the request, except that the time may be extended by the commission for good cause. Reliance on the advice, or the failure of the Commission to provide the advice within 21 working days of its receipt of the request, or within the extended time for response, shall be a complete defense in any enforcement proceeding initiated by the commission, and evidence of good faith conduct in any other civil or criminal proceeding if the requester, at least 21 working days prior to the alleged violation, requested written advice from the commission in good faith, disclosed truthfully all the material facts, and committed the acts complained of either in reliance on the advice or because of the failure of the commission to provide advice within 21 days of the request or such later extended time.

Sec. 706. Investigations and Enforcement Proceedings.

The commission shall conduct investigations of alleged violations of state law, the Charter and City ordinances relating to campaign financing, lobbying and conflicts of interest and governmental ethics.

Any person who violates any provision of the Charter or of a City ordinance relating to campaign financing, lobbying, conflicts of interest or governmental ethics, or who causes any other person to violate any provision, or who aids and abets any other person in a violation, shall be liable under the provisions of this Article.

(a) Investigations.

- (1) If the commission, upon the sworn complaint of any person or on its own initiative, first determines that there is sufficient cause to conduct an investigation, it shall investigate alleged violations of state law, the Charter or City ordinances relating to campaign financing, lobbying, conflicts of interest and governmental ethics. The commission shall not be required to investigate a complaint filed with it unless the complaint identifies the specific alleged violation which forms the basis for the complaint and contains sufficient facts to warrant an investigation.
- (2) The investigation shall be conducted in a confidential manner. Records of any investigation shall be considered confidential information pursuant to Section 18362 of Title 2 of the California Code of Regulations, as amended, or any successor provision. Any member or employee of the commission or other person who, prior to a determination by the Executive Director whether or not to proceed with an administrative or other enforcement action, discloses information about any preliminary investigation, except as necessary to conduct the investigation, shall be liable pursuant to this Article. The unauthorized release of confidential information shall be sufficient grounds for the termination of the employee or removal of the commissioner responsible for the release. The termination of clerical employees only shall be subject to applicable civil service provisions.
- (3) The commission and any special prosecutor may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records or other items material to the performance of the commission's duties or exercise of its powers.
 - (b) **Findings of Probable Cause; Administrative Enforcement.** If the Executive Director of the commission determines that there is probable cause to believe that a provision of the Charter or City ordinances relating to campaign financing, lobbying, conflicts of interest or governmental ethics has been violated, the Executive Director shall cause an administrative enforcement accusation to be issued and served. No finding of probable cause shall be made by the commission unless, at least 21 days prior to the commission's consideration of the alleged violation, the person alleged to have committed the violation is notified of the alleged violation by service of process or registered mail with return receipt requested, is provided with a summary of the evidence, and is informed of his or her right to be present in person and represented by counsel at any proceeding held for the purpose of considering whether probable cause exists for believing the person committed the violation. Notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or, if the registered mail receipt is not signed, the date returned by the post office. A proceeding held for the purpose of considering probable cause shall be private unless the alleged violator files with the commission a written request that the proceeding be public.
 - (c) **Administrative Hearings, Orders and Penalties.** After an accusation is issued and served, the commission shall cause a public evidentiary hearing to be held to determine if a violation has occurred. When the commission determines on the basis of

substantial evidence presented at the hearing that a violation has occurred, it shall issue an order which may require the violator to:

- (1) cease and desist the violation;
- (2) file any reports, statements or other documents or information required by law; and/or
- (3) pay a monetary penalty to the General Fund of the City of up to five thousand dollars (\$5,000) for each violation or three times the amount which the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater. When the commission determines that no violation has occurred, it shall publish a declaration so stating.

(d) **Referrals Between Agencies.** Regardless of whether the Executive Director makes a formal determination concerning probable cause, he or she may refer the matter to another appropriate agency for purposes of enforcement.

Sec. 707. Divestiture.

In the event a member of a City board or commission is disqualified during any 365 day period from acting on (1) three or more agenda matters by reason of the same investment in a business entity, the same interest in real property or the same source of income, or (2) 1% or more of the matters pending before the board or commission by reason of any investments in business entities, any interests in real property or any sources of income, the commission shall examine the nature and extent of the conflicts and shall determine whether the member has a significant and continuing conflict of interest. If the commission so determines, it shall order divestment of the conflicting investment, interest or source of income. The Council may, by ordinance, impose additional requirements to assure that continuing conflicts of interest by members of boards and commissions are adequately monitored and avoided.

Sec. 708. Legal Services.

The City Attorney shall provide legal services to the commission. Notwithstanding Section 275, the commission may employ or contract for staff counsel to give advice to the commission and to take such action as the commission may direct on matters which directly involve the conduct of the City Attorney, his or her office, or his or her election campaign.

Sec. 709. Judicial Review.

Any interested person may seek judicial review of any action of the commission.

Sec. 710. Appointment of Special Prosecutor.

(a) Notwithstanding Section 275, when the City Attorney determines that his or her office has a possible conflict of interest and that the office should not investigate or prosecute alleged violations of the Charter, City ordinances or regulations, or statutes relating to campaign financing, lobbying, conflicts of interest or governmental ethics, the City Attorney shall notify the City Ethics Commission, which by a four-fifths vote of all of its members may request the appointment of a special prosecutor to conduct the investigation. A special prosecutor shall not be appointed when it appears from a preliminary investigation that an alleged violation will warrant only an action for civil damages or administrative penalties.

(b) The request for the appointment of a special prosecutor shall be made to a standing committee composed of three retired judges selected by the commission at the beginning of each odd-

numbered year. The three judge panel shall name the special prosecutor, who upon appointment shall have the authority to file and prosecute criminal and civil actions in the name of the People.

(c) Each fiscal year there shall be included in the budget of the City Ethics Commission the sum of two hundred fifty thousand dollars (\$250,000) for expenditure to support any special prosecutor appointed pursuant to this section. In the event that all these funds have been or are likely to be expended before the end of any fiscal year, the commission may ask the Council for an additional appropriation. Under no circumstance shall the amount appropriated or provided under contract for a special prosecutor exceed two hundred fifty thousand dollars (\$250,000) in any fiscal year without Council approval. The Council shall have 30 days (excluding weekends and holidays) following its receipt to accept, reject, or modify a request for additional funds from the commission. The Mayor shall act on the Council's action within five days (excluding weekends and holidays). If the Mayor vetoes the Council's action, the Council shall have five days

(excluding weekends and holidays) to override that veto by a two-thirds vote.

(d) A special prosecutor appointed pursuant to this section may be removed from office only by the action of the commission, and only for good cause, physical disability, mental incapacity, or any other condition that substantially impairs the performance of the special prosecutor's duties.

Sec. 711. Appropriation.

The Council shall appropriate funds for the commission at least one year in advance of each subsequent fiscal year.

Sec. 712. Authority; Conflict with other Charter Provisions.

This Article is adopted pursuant to and under the authority of Article XI, Section 5 of the California Constitution, and California Government Code Section 81013. In the event any provision of this Article conflicts with other provisions of the Charter, this Article shall prevail.

ARTICLE VIII
BOARD OF EDUCATION

Sec. 800. Authority.

The provisions of this Article are adopted pursuant to the City's authority under California Constitution Article XI, Section 5, and Article IX, Section 16.

Sec. 801. Board of Education.

The Board of Education of the Los Angeles Unified School District shall consist of seven members, elected by districts.

Sec. 802. Redistricting.

(a) **Redistricting by Ordinance.** Commencing in 2002, the Council shall by ordinance redistrict the Los Angeles Unified School District into seven districts designated in the ordinance by numbers from one to seven, inclusive. Those districts shall be used for all elections of members of the Board of Education, including their recall, and for filling any vacancy in the office of member of the Board of Education, after the effective date of the ordinance and until new districts are established.

(b) **Redistricting Commission.** There shall be a Redistricting Commission to advise the Council on drawing of Board district lines. The Commission members shall be appointed in the following manner: one by each member of the Board of Education, four by the Council President, and four by the Mayor. Notwithstanding the provision of Section 501(d), one of the Council President's appointees, and one of the Mayor's appointees, must reside within the Los Angeles Unified School District but outside the limits of the City. No officer or employee of the School District shall be eligible to serve on the Commission. The Redistricting Commission shall appoint a director and other personnel, consistent with budgetary approval, which positions shall be exempt from the civil service provisions of the Charter.

(c) **Redistricting Process.** The Redistricting Commission shall be appointed before the date by which the Census Bureau is to release the decennial census data. A new Commission shall be appointed to advise the Council prior to each subsequent redistricting. The Commission shall begin the redistricting process at any time after the necessary data are obtained from the most recent Federal Census, but no later than January 1, 2002 and each subsequent tenth anniversary of that date. The Commission shall seek public input throughout the redistricting process. The Commission shall present its proposal for redistricting to the Council no later than a date prescribed by ordinance.

The Council shall adopt a redistricting ordinance no later than July 1, 2002, and each subsequent tenth anniversary of that date. Nothing in this section shall prohibit the Council from

redistricting with greater frequency provided that districts so formed each contain, as nearly as practicable, equal portions of the total population of the Los Angeles Unified School District as shown by the Federal Census immediately preceding the formation of districts or based upon other population reports or estimates as may be determined by the Council to be substantially reliable.

(d) **Criteria for Redistricting.** All districts shall be drawn in conformance with the requirements of state and federal law and to the extent feasible shall keep neighborhoods and communities intact, utilize natural boundaries or street lines, be geographically compact, and conform to high school attendance zones.

(e) **Effect of Redistricting on Incumbents.** No change in the boundary or location of any district by redistricting shall operate to abolish or terminate the term of office of any member of the Board of Education prior to expiration of the term of office for which that member was elected.

(f) **Annexation or Consolidation.** Territory added to the Los Angeles Unified School District after the adoption of a districting ordinance shall be added to an adjacent and contiguous district or districts by the Council by ordinance.

(g) **Terms of Office.** Members of the Board of Education shall hold their office for a term of four years. The terms of office of those Board members elected from odd-numbered districts shall commence during each fourth anniversary of 1979, and for the members elected from even numbered districts shall commence during each fourth anniversary of 1981.

Sec. 803. Election of Board Members.

The election of Members of the Board of Education of the Los Angeles Unified School District shall be conducted in accordance with the provisions of Article IV of the Charter and applicable ordinances consistent with the Charter.

Sec. 804. Compensation.

Each member of the Board of Education shall receive, in full compensation for all services of every kind rendered by him or her, such amounts payable from funds of the school district, as are now or may hereafter be provided by the general laws of this state.

Sec. 805. Powers of the Board.

The Board of Education shall have power to control and manage the public schools of the Los Angeles Unified School District in accordance with the Constitution and laws of the state.

ARTICLE IX
DEPARTMENT OF NEIGHBORHOOD EMPOWERMENT

Sec. 900. Purpose.

To promote more citizen participation in government and make government more responsive to local needs, a citywide system of neighborhood councils, and a Department of Neighborhood Empowerment is created. Neighborhood councils shall include representatives of the many diverse interests in communities and shall have an advisory role on issues of concern to the neighborhood.

Sec. 901. Department of Neighborhood Empowerment.

The Department of Neighborhood Empowerment shall have the duties and responsibilities set forth in this Article and elsewhere in the Charter to implement and oversee the ordinances and regulations creating the system of neighborhood councils enacted pursuant to Section 905. Duties and responsibilities shall include:

(a) prepare a plan for the creation of a system of neighborhood councils to ensure that every part of the City is within the boundary of a neighborhood council, and has an opportunity to form a neighborhood council (Plan);

(b) assist neighborhoods in preparing petitions for recognition or certification, identifying boundaries that do not divide communities, and organizing themselves, in accordance with the Plan;

(c) arrange Congress of Neighborhood meetings if requested to do so by recognized neighborhood councils;

(d) assist neighborhood councils with the election or selection of their officers;

(e) arrange training for neighborhood councils' officers and staff;

(f) assist neighborhood councils to share resources, including offices, equipment, and other forms of support for them to communicate with constituents, other neighborhood councils and with government officials; and

(g) perform other duties as provided by ordinance.

Sec. 902. Board of Neighborhood Commissioners.

(a) There shall be a board of seven commissioners to be known as the Board of Neighborhood Commissioners (board). Commissioners shall be appointed by the Mayor, and shall be from diverse geographic areas, as further specified by ordinance. Appointment and removal of commissioners shall otherwise be in accordance with Section 502.

(b) The board shall be responsible for policy setting and policy oversight, including the approval of contracts and leases and the promulgation of rules and regulations, but shall not be responsible for day-to-day management.

(c) The board shall operate in accordance with Sections 503 through 508 and 510 of the Charter.

Sec. 903. General Manager.

(a) There shall be a general manager of the Department of Neighborhood Empowerment who shall be appointed by the Mayor, subject to confirmation by the Council, and may be removed as provided in Section 508.

(b) The general manager shall have those powers and duties set forth in Section 510.

(c) The general manager shall appoint, discharge and prescribe the duties of staff, consistent with the civil service provisions of the Charter.

Sec. 904. Development of the Neighborhood Council Plan.

The Department of Neighborhood Empowerment shall develop a Plan for a citywide system of neighborhood councils, in conformance with the following:

(a) The Department of Neighborhood Empowerment shall seek public input in the formulation of the Plan.

(b) The Plan shall contain a statement of goals, policies and objectives of the Neighborhood Council system, and shall contain specific regulations, in draft ordinance format (Regulations) which, if adopted by ordinance, would be sufficient to implement the Plan.

(c) The Regulations shall establish the method by which boundaries of neighborhood councils will be determined. The system for determining boundaries shall maintain neighborhood boundaries to the maximum extent feasible, and may consider community planning district boundaries where appropriate.

(d) The Regulations must ensure that all areas of the City are given an equal opportunity to form neighborhood councils.

(e) The Regulations shall establish the procedure and criteria for recognition or certification of neighborhood councils.

(f) The Regulations shall not restrict the method by which the members of a neighborhood council are chosen, if the process otherwise satisfies the requirements of this Article.

(g) The Regulations shall require that neighborhood councils adopt fair and open procedures for the conduct of their business.

(h) The Mayor and Council shall provide for the creation of the Department of Neighborhood Empowerment and appointment of the general manager within 120 days of the effective date of this Article.

Sec. 905. Implementation of the Plan.

The Department of Neighborhood Empowerment shall complete development of the Plan and present the Plan and all necessary Regulations for a system of neighborhood councils to the Council and Mayor within one year of the establishment of the department and commission. The Council shall consider the Regulations, and within six months after presentation of the Plan to Council may adopt ordinances to implement the Regulations as proposed, or as modified by the Council consistent with the requirements of the Plan set forth in Section 904. If implementing ordinances are not adopted within this time period, the Regulations shall become effective, and to the extent not inconsistent with law shall be binding upon all City departments and offices.

Sec. 906. Certification of Neighborhood Councils.

(a) **By-laws.** Each neighborhood council seeking official certification or recognition from the City shall submit an organization plan and by-laws to the Department of Neighborhood Empowerment showing, at a minimum:

(1) the method by which their officers are chosen;

(2) neighborhood council membership will be open to everyone who lives, works or owns property in the area (stakeholders);

(3) assurances that the members of the neighborhood council will reflect the diverse interests within their area;

(4) a system through which the neighborhood council will communicate with stakeholders on a regular basis;

- (5) a system for financial accountability of its funds; and
- (6) guarantees that all meetings will be open and public, and permit, to the extent feasible, every stakeholder to participate in the conduct of business, deliberation and decision-making.

(b) Petitioning for Certification and Approval.

Neighborhood councils may petition for certification or recognition in accordance with rules and procedures set forth in the Plan.

Sec. 907. Early Warning System.

The Regulations shall establish procedures for receiving input from neighborhood councils prior to decisions by the City Council, City Council Committees and boards and commissions. The procedures shall include, but need not be limited to, notice to neighborhood councils as soon as practical, and a reasonable opportunity to provide input before decisions are made. Notices to be provided include matters to be considered by the City Council, City Council Committees, and City boards or commissions.

Sec. 908. Powers of Neighborhood Councils.

Subject to applicable law, the City Council may delegate its authority to neighborhood councils to hold public hearings prior to the City Council making a decision on a matter of local concern.

Sec. 909. Annual City Budget Priorities.

Each neighborhood council may present to the Mayor and Council an annual list of priorities for the City budget. The Mayor shall inform certified neighborhood councils of the deadline for submission so that the input may be considered in a timely fashion.

Sec. 910. Monitoring of City Services.

Neighborhood councils shall monitor the delivery of City services in their respective areas and have periodic meetings with

responsible officials of City departments, subject to their reasonable availability.

Sec. 911. Appropriation.

The Mayor and Council shall appropriate funds for the Department of Neighborhood Empowerment and for the startup and functioning of neighborhood councils for the first two years after the effective date of this Article. Funds shall be appropriated into a special fund to be established by ordinance. The Mayor and Council shall thereafter appropriate funds for the department and neighborhood councils at least one year in advance of each subsequent fiscal year.

Sec. 912. Review.

The Mayor and Council shall appoint a commission as prescribed by ordinance to evaluate the provisions of this Article, the Regulations adopted pursuant to this Article, and the efficacy of the system of neighborhood councils no later than seven years after the adoption of the Charter. The commission shall make recommendations to the Council regarding changes to the Charter or the Regulations, as it deems appropriate.

Sec. 913. Transfer of Powers.

Notwithstanding any other provision of the Charter, the Mayor and Council shall not transfer powers, duties or functions of the Department of Neighborhood Empowerment to any other department, office or agency pursuant to Section 514 during the first five years after implementation of the Plan pursuant to Section 905.

Sec. 914. Effect of Ordinances.

The Council may adopt ordinances concerning neighborhood councils consistent with requirements for the Plan set forth in Section 904 at any time, which ordinances shall supercede any inconsistent Regulations that have become effective pursuant to Section 905.

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Volume II Employment Provisions

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ARTICLE X
EMPLOYMENT PROVISIONS

CIVIL SERVICE

Sec. 1000. Applicability.

The provisions of this Article shall apply to all employees of the City, except for those specifically exempted in Section 1001.

Sec. 1001. Exemptions.

Each of the following positions shall be exempt from this Article:

(a) Exempt Positions.

- (1) All officers elected by the people.
- (2) All members of the boards of commissioners.
- (3) All chief administrative officers of the City's departments and offices and the Directors of the Public Works' Bureaus of Contract Administration, Engineering, Sanitation, Street Lighting and Street Services.
- (4) Two positions in the class of Assistant General Manager or Deputy Director in each City office or department, and two positions in the class of Assistant Director in each of the Public Works Bureaus of Contract Administration, Engineering, Sanitation, Street Lighting and Street Services, and two positions in the class of Deputy Controller in the Office of Controller.
- (5) All Deputy Chiefs of Police.
- (6) Positions in the Office of the Mayor.
- (7) Positions established by the Council for the purpose of assisting the members of the Council in the performance of their duties, except for clerical personnel.
- (8) All positions in the office of the City Attorney.
- (9) The Chief Financial Officer of the Department of Water and Power.
- (10) The Executive Director of the Board of Police Commissioners.
- (11) The Inspector General of the Police Department.
- (12) The Executive Officer and all non-clerical personnel of the City Ethics Commission.
- (13) All Assistant Directors in the Office of Administrative and Research Services.
- (14) The Traffic Manager and the Port Warden of the Harbor Department.
- (15) Crossing Guards.
- (16) All physicians and psychologists subject to Section 1040.
- (17) All officers of election.
- (18) Persons specially employed by the City Clerk, as authorized by the provisions of Section 405 of the Charter, to assist in the conduct of any election.
- (19) Positions elsewhere specifically exempted by the Charter.

(b) **Management, Professional, Scientific or Expert Services.**

In addition to those positions described in subsections (a), (c) and (d) of this section, up to 150 persons to provide management services or to render professional, scientific or expert services of an exceptional character to offices or departments including the Proprietary Departments. Appointments under this subsection shall be subject to the following:

- (1) As to each position to be exempted under this subsection, and prior to the initiation of the selection process to fill the

position, the Mayor shall forward to the Council a recommendation for an exempt position which sets forth the educational, experience and other professional requirements of the position and describes the circumstances presented by the department seeking the appointment that preclude filling the position through the civil service system. Within ten Council meeting days from receipt of the recommendation, the Council may by two-thirds vote disapprove the Mayor's recommendation for the exemption. If the Council does not act on the recommendation within the specified time period, the recommendation shall be deemed approved. When the position is vacated, the exemption shall terminate unless re-authorized in accordance with this subsection.

- (2) No person may be employed under this subsection if he or she has served in an exempt position in the office of an elected City official in the prior two years unless he or she meets the professional experience requirements established for the position.
- (3) Persons who have been exempted or who have been appointed to an exempt position prior to the effective date of this Charter, will retain their exemption. Exemptions under this subsection shall be prospective and shall be made only at the time of filling a vacant position.
- (4) Council may, by ordinance adopted by two-thirds vote, increase the maximum number of exempt positions as provided in subsection (b) to no more than one percent (1%) of the regular authorized positions in the City workforce, provided that if the maximum number of exempt positions is increased pursuant to this subsection, the number of positions created by subsections (a) (4), (5) and (c) of this section shall be counted toward the maximum allowable exemptions. If Council provides for a maximum number of exemptions based on a percentage of the workforce, and a reduction in the workforce results in more filled exempt positions than permissible, each incumbent shall retain the exemption, but when vacated, such excess exemptions shall terminate.

(c) **Proprietary Department Positions.** In addition to the exempt positions in the Proprietary Departments created by subsections (a), (b) (1), (2), (3) and (d) of this section, up to 15 positions in the Department of Water and Power and up to ten positions to be allocated between the Harbor Department and the Department of Airports for employment of persons to provide management services or to render professional, scientific or expert services of an exceptional character. Exemption of these positions shall be subject to the following:

- (1) Upon receipt of a request for an exempt position by the department which sets forth the educational, experience and other professional requirements of the position and describes the circumstances that preclude filling the position through the civil service system, the Mayor shall forward to the Council a recommendation for the exempt position. Within ten Council meeting days from receipt of the recommendation, the Council may by two-thirds vote disapprove the Mayor's recommendation for the

exemption. If the Council does not act on the recommendation within the specified time period, the recommendation shall be deemed approved.

- (2) No person may be employed under this subsection if he or she has served in an exempt position in the office of an elected City official in the prior two years unless he or she meets the professional experience requirements established for the position.
- (3) Persons who have been exempted or who have been appointed to an exempt position prior to the effective date of this Charter, shall retain their exemption. Exemptions under this subsection shall be prospective and shall be made only at the time of filling a vacant position.
- (d) **Positions Approved by Council.** In addition to the exempt positions created in subsections (a), (b) and (c) of this section, any of the following may be exempted from the provisions of this Article upon the request of the head of the department or office in which they are employed, by order of the Board of Civil Service Commissioners, approved by the Council by resolution:
 - (1) positions of unskilled laborers, including drivers;
 - (2) positions for workers, mechanics or craftspersons (including crew leaders) employed exclusively in that position on the construction of public works, improvements or buildings;
 - (3) any position requiring the services of one individual for not more than half time and paying a salary not to exceed three-fourths of the monthly rate established by the salary fixing authority of the department, division or office for entering-level clerical positions;
 - (4) grant-funded positions for a term of no more than two years which, by application of the procedures described in this subsection, may be extended for one additional year for a maximum exemption period of three years.

Any exemption made under the provisions of (1) through (4) may be terminated at any time by resolution of the Board of Civil Service Commissioners.

(e) **Leave of Absence from Civil Service.** Each person exempted or appointed to an exempt position under this section shall, during the period of exempt employment, be considered as being on leave of absence from the classified civil service if at the time of exemption he or she holds a position in the classified civil service, or is entitled to hold a position therein, and shall continue, during such period, to accrue seniority credit the same as though serving in such position.

Sec. 1002. Employees of Acquired Public Utility.

All persons employed in the operating service of any public utility acquired by the City, who have been so employed for at least one year immediately prior to the date of the acquisition, may be employed by the City in their respective positions to the extent practicable, and, so long as continuously so employed by the City, shall be exempt from the civil service provisions of this Charter.

Sec. 1003. Classification of Positions.

The Board of Civil Service Commissioners shall establish classes for all positions of employment. The positions classified by the board shall constitute the classified civil service of the City, and no appointment to any of these positions shall be made except

in accordance with the rules adopted by the board under the authority of this Article (the civil service rules).

Each class shall be given an appropriate title and shall include all positions sufficiently similar in respect to duties and responsibilities and that have the same requirements as to education, experience, knowledge and ability; the same tests of fitness; and to which the same schedule of compensation may apply with fairness.

Sec. 1004. Civil Service Rules.

The board shall promulgate civil service rules to carry out the purposes of this Article in accordance with applicable law. All rules and any changes to those rules shall be made in writing. The board shall give notice by publication in some daily newspaper circulated in the City of Los Angeles of the place or places where the rules may be obtained, and the date, not less than 30 days after the date of publication, when the rules shall go into effect. The civil service rules shall provide for, among other subjects, examinations, leaves of absence, transfers, temporary appointments, disciplinary hearings, layoffs, and procedures for the review and appeal of determinations by the general manager of the Personnel Department with respect to the civil service provisions of the Charter.

Sec. 1005. Examinations.

All applicants for positions in the classified civil service shall be subject to examination, which shall be public, competitive and open to all, with specified limitations as to experience and moral character. Examinations shall be practical, and shall relate to those matters that will fairly test the relative capacity of the persons examined to discharge the duties of the position to which they seek to be appointed and, when appropriate, shall include, or exclusively consist of, tests of physical qualifications, and manual skill. No limitation or restriction whatsoever shall be imposed, excepting to the extent permitted by applicable state or federal law in the departments of fire and police, fixing a maximum age in excess of which persons shall be deprived from taking examinations for or being employed in the classified civil service. The provisions of Section 104 (i) regarding discrimination on the basis of age shall not prohibit fixing a maximum age in the departments of fire and police if otherwise authorized by this section.

Sec. 1006. Credit for Military Service.

(a) Subject to the conditions set forth in this section, in all original examinations, the Board of Civil Service Commissioners shall, in addition to all other credits, give a credit of five percent of the total credits specified for an examination to all persons who receive a passing score on the examination and who have served in the armed forces of the United States during time of war or armed insurrection, or during any time when the United States is engaged in active military operations against any foreign power, whether or not war has been formally declared, or when the United States is assisting the United Nations in actions involving the use of armed forces to restore international peace and security (Military Service), if such persons are honorably discharged from active service even if they remain in the military reserve.

(b) The five percent (5%) credit shall be granted for a period of five years from the date of release from active Military Service of an eligible person or five years from the date the person becomes available for employment. A person shall be deemed unavailable

for employment if the person is a student engaged in a training or educational process approved by the board or is hospitalized as a result of a service-connected injury or illness.

(c) A five percent (5%) credit for a period not to exceed five years shall be given to widows or widowers of persons killed while in Military Service. Such five-year period shall commence to run from the date the spouse is deceased.

(d) A five percent (5%) credit for a period not to exceed five years shall be given to spouses of persons who are unable to work because of disabilities resulting from Military Service. Such five-year period shall commence to run from the date the board determines that the person became unable to work.

(e) Notwithstanding any time limitations set forth in other parts of this section, the five percent (5%) credit shall be provided to all persons with disabilities resulting from Military Service without regard to the date of discharge. For purposes of this subsection, a person shall be deemed disabled if the disability is certified by the Veterans Administration or its successor agency.

Sec. 1007. Examination Bulletins.

Notice of time, place and general scope of every examination shall be given by the general manager of the Personnel Department as provided in the civil service rules.

Sec. 1008. Register of Eligible Candidates.

The general manager of the Personnel Department shall prepare a register for each class of position in the classified civil service of the persons whose general average standing upon examination for the class is not less than the minimum fixed by the civil service rules, and who are otherwise eligible. These persons shall be listed in the register as candidates in the order of their relative excellence, as determined by their examination without reference to the date of examination. The board may prescribe a minimum score in the written portion of any examination, including credit for past service in examinations for promotion, and may exclude from subsequent portions of the examination any candidate who fails to attain the minimum score.

The board may, by its rules, provide for the extension of the life of an eligible list and may delegate to the general manager of the Personnel Department the authority to extend the life of an eligible list for entry-level positions in accordance with the civil service rules.

Sec. 1009. Promotion.

The board shall by its rules provide for promotion in the classified civil service on the basis of ascertained merit and seniority in service and examination, and shall provide, in all cases where it is practicable, that vacancies shall be filled by promotion. All examinations for promotion shall be competitive among members of lower ranks who apply for the examination and who have the experience and qualifications required by the board as a prerequisite for taking the examination. The general manager of the Personnel Department shall submit to the appointing authority for each promotion the names of eligible applicants in accordance with Section 1010.

In rating eligible candidates, the board shall make an allowance of credits for past service. The announcement of the examination shall state that credits will be given for past service. Upon the written request of the appointing authority, the board may certify the names of those applicants having the highest ratings on the open competitive eligible list whose scores before adjustment for

preferential credits are higher than the score of the highest available applicant on the promotional eligible register after credits for past service have been added. Names of candidates shall be removed from the register of eligibles for promotion after they have remained on the register for two years without re-examination.

Promotional examinations shall be held at intervals necessary to maintain a register of eligibles for promotional positions in which there are vacancies. The method and rules governing examination and certification for promotions shall be the same as provided for applicants for original appointment, except as otherwise provided in this section.

Sec. 1010. Certification.

(a) **Three Highest Whole Scores.** The appointing authority of a department shall notify the board when one or more classified positions are to be filled. The general manager of the Personnel Department shall certify to the appointing authority the names and addresses of those eligibles having the three highest whole scores on the register for the class to which the positions belong. The appointing authority shall fill the positions from the names certified by the general manager within 60 days from the date of certification. Certified test scores shall be made public.

(b) **Selective Certification.** Upon request of the appointing authority and approval by the board, the general manager of the Personnel Department may establish a separate register of eligibles from among those eligibles having the three highest whole scores based on factors such as special skills, licenses, language proficiency and specialized training.

(c) **Extra Certifications.** If there are sufficient eligibles available, the general manager of the Personnel Department shall certify at least five names and addresses more than the number of positions to be filled. If there are less than five available eligibles more than the number of positions to be filled within a range of three whole scores, the general manager of the Personnel Department shall certify the names and addresses of all available eligibles within such additional number of whole scores as necessary to provide a minimum of five available eligibles more than the number of positions to be filled.

Where there are remaining on the eligible list less than five available eligibles more than the number of positions to be filled and the general manager of the Personnel Department finds that it is for the good of the civil service, the names of all available eligibles may be certified and appointments may be made from among those available eligibles.

(d) **Certification Within Range of One or More Whole Scores.** In consideration of the number of vacancies to be filled and the likely number of available eligibles within a range of three whole scores, the general manager of the Personnel Department may certify the names and addresses of all available eligibles within a range of one or more whole scores whenever a certification is requested by an appointing authority and there are at least five eligibles available within such range over and above the number of positions to be filled.

(e) **Order of List.** Whenever the general manager of the Personnel Department certifies the names and addresses of eligible candidates, the names shall be listed in the order of the whole scores achieved, except that within the range of each single whole score the names of eligibles shall be listed in random order.

(f) **Certification at Least Three Times.** Each candidate, unless he or she is sooner appointed, or otherwise lawfully ceases to be a candidate, shall be certified for appointment in the class for which he or she is eligible not less than three times.

Sec. 1011. Probation.

(a) **Length of Probation.** A candidate appointed to an entry level classified position shall be employed on probation for a period not exceeding 12 months, with the specific period to be established by the board, and for a period not exceeding 18 months, to be measured from the commencement of recruit training, for those members of the Police Department appointed under civil service rules and regulations and sworn in, as provided by law, to perform the duties of regular police officers. The civil service rules may provide for a different period of probation for non-entry level employees, not exceeding six months except that a longer period, not exceeding 12 months, may be fixed for management personnel.

(b) **Termination During Probation.** At or before the expiration of the probationary period, the appointing authority may terminate the probationary employee by delivering written notice of termination to the employee assigning in writing the reasons for the termination. The appointing authority shall subsequently notify the board of such termination. Unless the probationary employee is served with written notice of termination during the probationary period, the employee's appointment shall be deemed complete.

Sec. 1012. Removal from and Reinstatement to the Register of Eligible Candidates.

(a) No candidate shall lose his or her place on a register of eligible candidates by certification or rejection, except that the board may remove names of candidates from a register after they have remained on the register for more than two years.

(b) The board may, by its rules, provide for striking off names of candidates from open competitive eligible lists established as a result of continuous examinations after they have remained on the list for six months.

(c) The civil service rules shall provide for reinstatement to the register of eligibles, on recommendation of the head of the department, of persons who have become separated from the civil service or who have been reduced in rank, other than persons who have been removed for cause.

(d) The board may, by its rules, provide for restoration to the register of eligibles, those candidates who are terminated during the probationary period, but the general manager of the Personnel Department may not certify any candidate to the department or office which terminated the candidate except at the specific request of the appointing authority of that department or office.

Sec. 1013. Temporary Appointment.

(a) **Length of Appointment.** To prevent the stoppage of public business or to meet extraordinary exigencies, any appointing authority may make temporary appointments to classified positions in accordance with civil service rules that the board shall prescribe. The board shall have the power to authorize such temporary appointments for up to 120 days. If the board is unable to establish an eligible list or if the eligible list is established but no employees can be secured from the list, the board may provide by rule for an extension of a temporary appointment for a period not to exceed an additional 120 days.

(b) **Termination.** Any temporary appointment shall terminate immediately when a regular appointment can be made unless the board finds that for a specified period it is necessary that the temporary employee remain to orient or train the new regular appointee.

(c) **Temporary and Intermittent Appointments.** The civil service rules shall provide for the tenure of persons appointed from a register of eligibles to positions determined by the board to be temporary or intermittent in character. Any rules adopted pursuant to this subsection shall provide that when appointment is made to a position determined to be temporary or intermittent, the provisions of Section 1011 with respect to period of probation and completion of appointment shall not apply.

Sec. 1014. Special Reassignments.

(a) **Reassignment Without Examination.** In addition to and notwithstanding the provisions of Section 1015, the board may by its rules provide for status and seniority for civil service employees in classes other than those for which they were examined, where:

- (1) an employee is incapable of performing satisfactorily the duties of his or her position because of injury, sickness or disability; or
- (2) an employee has completed a probationary period in the City service.

(b) **Requirements for Reassignment.** Any rules adopted by the board pursuant to this section shall provide that:

- (1) no employee may be placed in a different class without first receiving the employee's written consent to the reassignment;
- (2) no change of class status may be allowed if it would result in a promotion;
- (3) no employee may be placed in a different class unless the employee possesses the minimum qualifications required for the class and the capability of performing the required duties;
- (4) no employee who is placed in a different class pursuant to the provisions of this section may be credited with more seniority than accumulated in the employee's former class.

Sec. 1015. Layoffs.

In addition to all other matters, the board shall by its rules provide for the following:

(a) **Order of Suspension and Restoration.** The civil service rules shall provide the manner and order, not inconsistent with the provisions of this section, in which all persons employed in the classified civil service shall be suspended and restored where the suspension results from lack of work, lack of funds or abolishment of position or otherwise, excepting suspension for personal delinquency. In all cases, suspension and restoration shall be based upon seniority as provided in this section, or as provided by the civil service rules.

No assignment of employees to positions within a class, except as provided in this section, for which no different examination requirements have been established by the board shall affect the requirements of this section governing suspension and restoration for lack of work, lack of funds or abolishment of position or otherwise. In all of these cases, all employees within the same Class-Group, as defined below, and for which similar

examinations are required by the board shall be considered as one Class-Group for purposes of suspension and restoration.

Whenever suspension other than for personal delinquency is to be made in any class in an office, department, bureau or major division in a department having control of its own funds (Class-Group), the person to be suspended shall be selected in the order determined by length of service in such class and in classes of higher rank since regular appointment in the classified civil service, after deducting periods of absence in accordance with the civil service rules. Persons having the shortest length of service shall be suspended first.

(b) **Displacement.** Any person so suspended shall be entitled to displace the person holding a position in a Class-Group in which a regular position was formerly held by the person so suspended, who has the shortest length of service in such Class-Group and in classes of higher rank after deducting periods of absence as provided by the civil service rules. Any person entitled to displace a person may fill instead, with the consent of the appointing authority, a vacant position in the Class-Group in which he or she is entitled to displace. In the event an employee exercises his or her right to displacement, the employee shall receive the salary at the level of the highest paygrade in the Class-Group which the employee held prior to leaving the Class-Group.

(c) **Determination of Class-Groups.** The Class-Group in which suspension is to be made or the Class-Group in which restoration is to be made, shall include all positions created from such Class-Group after the original regular appointment therein of the person suspended or restored. The determination of the board as to the Class-Group from which such positions were subsequently created shall be final and conclusive.

(d) **Reserve List.** A reserve list shall be established in each class in each office, department, bureau or division of a department having control of its own funds which shall consist of the names of those persons who have been regularly appointed or promoted to, and have served beyond the probationary period in a class and have been suspended for causes other than personal delinquency. Each person whose name appears on the reserve list, until regularly restored to a position in the class in the office, department, bureau or division from which he or she was suspended shall be certified for appointment to a position in the class in the office, department, bureau or division from which he or she was suspended. The name of any person who has been out of the service of the City for more than five years shall be permanently removed from the reserve list.

(e) **Order of Certification.** Whenever any vacancy is to be filled, it shall be filled by certifying in the following order:

- (1) from the reserve list, if any, in the class and office, department, bureau or major division in which the vacancy exists, the name of the person with greatest length of service in the class and all classes of higher rank, or by transfer of a person whose service in the class and classes of higher rank is greater than that of any person on the reserve list;
- (2) from the promotional list, if any, provided for in Section 1009, of the office, department, bureau or major division where the vacancy is to be filled;
- (3) from the reserve list of other offices, departments, bureaus and major divisions as provided in the civil service rules;

- (4) by certifying from the appropriate register of eligibles provided in this Article.

As to certifications to be made from other than the reserve list of the office, department, bureau or major division in which the vacancy exists, the board may by its rules provide that when the list or register from which certification is to be made does not contain as many names as may be certified for any vacancy or vacancies under the provisions of Section 1010, additional names, up to but not exceeding the maximum number allowed, shall be certified from the list or register next in the order as provided above.

(f) **Procedural Review.** The board shall have the same power and duty to review as to regularity of procedure all cases of suspension for lack of work, lack of funds or abolishment of position or otherwise, as elsewhere provided in the Charter for removal, discharge, or suspension for cause; but the question of the necessity for suspension for lack of work, lack of funds or abolishment of position shall not be subject to review by the board.

Sec. 1016. Discharge or Suspension.

(a) **Discharge or Suspension for Cause.** Any board or officer having the power of appointment shall have the power to suspend or discharge any officer, member or employee of the office or department. No person in the classified civil service shall be discharged or suspended except for cause, which shall be stated in writing by the board or officer having the power to make such discharge or suspension.

(b) **Statement of Cause.** The written statement of cause shall be filed with the Board of Civil Service Commissioners, with certification that a copy has been served upon the person so discharged or suspended, in accordance with Section 1018. Upon filing with the board, the discharge or suspension shall take effect.

(c) **Application for Hearing.** Within five days of service of the written statement upon any person so discharged or suspended, the person shall file a written application with the board in order to require the board to hold a hearing to investigate the grounds for the discharge or suspension. In the event that the person does not file an application, the board may, but is not required to, within 15 days after the filing of the written statement with the board, determine to hold a hearing to investigate the grounds for the discharge or suspension.

(d) **Reinstatement; Restoration.** If, after investigation and hearing as required by law is held, the board finds, in writing, that the grounds stated for the discharge or suspension were insufficient or were not sustained, the board shall order the person to be reinstated or restored to duty. With the consent of the appointing authority, the board may also reduce the length of the suspension, or may substitute suspension for discharge, if the board makes a written finding that such action is warranted. The order of the board with respect to the discharge or suspension shall be promptly certified to the appointing board or officer, and shall be final and conclusive.

(e) **Compensation.** If the board orders reinstatement or restoration to duty of a person who has been discharged or suspended, the person shall be entitled to receive compensation from the City the same as if he or she had not been discharged or suspended by the appointing board or officer.

(f) **Change of Disciplinary Review.** The Council may, by ordinance, provide for an alternative system for impartial review

of employee discipline as set forth in subsections (b) through (e) of this section, provided that such a system conforms with due process standards for a fair hearing, and provided there remains a process for review of employee discipline in which costs are borne by the City.

(g) **Finality of Order of Suspension for Lack of Funds.** The order of any appointing board or officer suspending any person because of lack of funds or lack of work in the department shall be final, and shall not be subject to review by the Board of Civil Service Commissioners.

(h) **Applicability.** The procedure for review of discipline set forth in this section shall not apply to:

- (1) those members of the Police Department appointed under civil service rules and regulations and sworn in, as provided by law, to perform the duties of regular police officers who are subject to the provisions of Section 1070 of the Charter.
- (2) those members of the Fire Department appointed under civil service rules and regulations to perform the duties of regular firefighters who are subject to the provisions of Section 1060 of the Charter.
- (3) any suspension of five working days or less in any 12 month period for personal delinquency. The reasons stated in writing for any suspension shall be furnished to the suspended employee and promptly filed with the board. Any suspension which results in an employee having a total suspended time by reason of the exercise of authority under this subsection in excess of five working days in any 12 month period shall be subject to all of the provisions of this section.

Sec. 1017. Demand for Reinstatement; Claim for Compensation.

Whenever it is claimed by any person that he or she has been unlawfully demoted, suspended, laid off or discharged, and that person has filed an application for a hearing as provided in Section 1016(c) and reinstatement or restoration to duty has been denied, the person may file a written claim for compensation and a demand for reinstatement. The claim and demand must be filed within 90 days from the date of the decision of the board following a hearing, or if no hearing is applied for, from the date on which it is claimed that the person was first illegally, wrongfully or invalidly demoted, laid off, suspended or discharged. The demand for reinstatement must be filed with the board and the claim for compensation must be filed with the City Clerk. Failure to file a demand for reinstatement with proof of filing with the board, within the time specified in this section, shall be a bar to any action to compel reinstatement. Proof of filing with the City Clerk of the claim for compensation within the time and in the manner specified shall be a condition precedent to any recovery of wages or salary claimed to be due on account of demotion, layoff, suspension or discharge. Except as provided in this section, claims for compensation shall conform to the requirements of Section 350.

Sec. 1018. Service of Notice.

Service of notice in accordance with this Article may be made by handing a copy to the person or by sending a copy by certified mail to the person's last known residence if, after due diligence, the person cannot be found.

Sec. 1019. Falsification and Corruption.

(a) **Investigation.** The board shall investigate the enforcement of the civil service provisions of this Article and the civil service rules. All officers of the City shall aid the board in all proper ways in carrying out the civil service provisions of this Article.

(b) **Reprimand; Recommendation of Discharge or Suspension.** Any person holding a position in the classified civil service who willfully violates any of the civil service provisions of this Article shall, after hearing by the board, be subject to reprimand by the board. The board shall have the right to recommend suspension, discharge, or in lieu of discharge, demotion of the person to the appointing power.

(c) **Misdemeanors.** The following conduct is a violation of this Article and shall be punishable as a misdemeanor:

- (1) any oral or written false statement willfully made under oath in any application or document filed with the board, in any proceeding before the board, in any investigation conducted by or under the jurisdiction of the board, or in any proceeding arising under this Article.
- (2) any conduct, whether done alone or in cooperation with others to defeat, deceive or obstruct any person in respect to his or her right of examination; to corruptly or falsely mark, grade, estimate, or report upon the examination of proper standing of any person examined under the civil service provisions, or aid in so doing; or to willfully or corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects of any person for employment or promotion.
- (3) direct or indirect payment or promise of payment of money or other valuable consideration to any person for appointment, proposed appointment, or promotion to a position in the classified civil service.

Sec. 1020. Certification of Employment.

The Controller shall not approve any compensation for services to any person performing the duties of a position in the classified civil service, unless the board has certified that the person has been employed in accordance with this Article and the civil service rules.

Sec. 1021. Employment Upon Consolidation or Annexation of Other Governmental Entities.

Officers and employees of any governmental agency, municipality or any special assessment or other special district created under general laws, all or part of which may become part of the City through consolidation, annexation or joint powers agreement, may upon Council approval of the consolidation, annexation or joint powers agreement become employees of the City in a similar capacity as provided in this section.

In order to avoid suspension for lack of work of employees of the Community Redevelopment Agency (CRA), the Council may, by resolution, direct the Board of Civil Service Commissioners to develop procedures allowing placement, as provided in this section, of CRA employees in civil service positions for which they are qualified in any City office or department except the Department of Water and Power. Appointment would be made only at the discretion of the City department or office where there is a vacancy, and only after persons on a department reserve list, if any, have been offered the position in accordance with civil service rules.

Upon consideration of the resolution regarding CRA employees or consolidation, annexation, or joint powers agreement, but prior to final approval, the Council shall request that the Board of Civil Service Commissioners establish the qualifications, fitness requirements and background standards for the prospective employees and establish the method of determining that the prospective employees meet those qualifications, requirements and standards. The board shall also establish the appropriate employment classifications, length of probationary periods, and seniority for layoff and examination purposes for the prospective employees. The Council may establish terms and conditions of employment in addition to those provided elsewhere in the Charter, and in addition to or different from those provided by ordinance, by memorandum of understanding or otherwise.

Those employees who are determined by the board to have met the qualifications, requirements, and standards established by the board, and who meet all other legally applicable requirements, shall become employees of the City upon final approval of the consolidation, annexation or joint powers agreement by the Council or, in the case of individual CRA employees, upon approval of the appointment by the board.

If the duties of any officer or employee of any municipality or any special assessment or other special district conflict with the duties of any officer of the City, then that officer or employee shall become an employee of the City in a position subordinate to the officer of the City.

Sec. 1022. Use of Independent Contractors.

Nothing in this Article shall be deemed or construed as preventing the Council, or a board of commissioners in the case of those departments having control of their own revenues and funds, from entering into contracts for the performance of work when it is determined by the Council or the board of commissioners that the work can be performed more economically or feasibly by independent contractors than by City employees. The authority of the Council set forth in this section may be delegated to departments and officers of the City under rules and procedures as the Council may prescribe. Nothing in this section shall limit the application of Sections 370 through 373 of the Charter relating to contracts and competitive bidding for contracts.

Sec. 1023. Military Leave.

Every officer or employee who leaves his or her office or position to serve in the armed forces of the United States shall be entitled to a leave of absence and, upon returning to the service of the City, shall be entitled to restoration to the position to which he or she would have been entitled as if the leave had not occurred, subject to applicable state and federal law and as further provided by ordinance.

Sec. 1024. Non-discrimination.

Notwithstanding any other provision of the Charter, the City shall not discriminate in the provision of employee benefits between employees with spouses and employees with domestic partners. The Council shall adopt ordinances to implement this provision.

DISCIPLINE FOR PHYSICIANS AND PSYCHOLOGISTS

Sec. 1040. Rights and Due Process Procedures.

Persons appointed to full-time, non-management positions as physicians or psychologists shall be employed on probation for a period of two years. Persons serving in such positions as of the effective date of this section, shall be given credit for their service with the City prior to the effective date with respect to completion of the required probationary period. Upon successful completion of the probationary period, these employees shall be entitled to the rights and due process procedures set forth in Section 1016.

Notwithstanding any other provision of this section, any person employed by the City as a full-time physician or psychologist is subject to layoff due to lack of work, lack of funds, or abolishment of position in a manner consistent with the principles contained in Section 1015. The civil service rules promulgated pursuant to that section shall establish the procedure for such layoffs, determination of seniority rights and for the establishment of reserve lists.

EMPLOYMENT IN THE CITY ATTORNEY'S OFFICE

Sec. 1050. Employment in the City Attorney's Office.

The City Attorney's Office shall be subject to the following:

(a) No person shall be removed, suspended or reduced in grade without good cause who has served continuously as an attorney in the Office of the City Attorney for two years or more immediately preceding the action, or who has served continuously in any other capacity in the Office of the City Attorney for one year or more immediately preceding the action. The time during which persons serve at the pleasure of the City Attorney as prescribed in subsection (d) shall not be considered in the computation of time periods under this provision.

(b) Every person having served for those periods enumerated in the preceding subsection who is removed, suspended, or reduced in grade, shall have the right to appeal to an impartial trier of fact in accordance with written rules promulgated by the City Attorney. The rules shall, before they become effective, be submitted to the Council. If the Council approves the rules, or if the Council fails to disapprove the rules within 60 days after submission, they shall become effective. The rules shall provide for service upon the person involved of a written statement of grounds and for a fair hearing by an impartial trier of fact who may:

- (1) deny the appeal;
- (2) sustain the appeal and order that the appellant be reinstated with full back pay to the position from which removed, suspended, or reduced in grade; or
- (3) sustain the appeal in part and deny it in part and substitute as a lesser penalty either a suspension or a reduction in grade as may be appropriate. The trier of fact shall have the power to administer oaths and affirmations, examine witnesses under oath, and compel the attendance of witnesses and the production of evidence at the hearing by subpoena to be issued by the City Clerk.

(c) Notwithstanding any other provision of this section, any person employed in the Office of the City Attorney is subject to layoff due to lack of work, lack of funds, or abolishment of position in a manner consistent with the principles contained in Section 1015. The rules promulgated pursuant to the preceding

subsection shall establish the procedures for layoffs, determination of seniority rights, and for the establishment of reserve lists.

(d) Notwithstanding any other provision of this section, the City Attorney may appoint to serve at the pleasure of the City Attorney from among persons not then employed in the Office of the City Attorney no more than four assistants who meet the qualifications for those positions, and no more than four other persons. At the time of the appointments, the City Attorney shall file with the City Clerk a statement identifying the persons appointed. The appointment of all persons serving at the pleasure of the City Attorney shall terminate when the succeeding City Attorney is sworn in, unless reappointed by the succeeding City Attorney. In the event there is no vacancy in the class of positions to which a person is appointed under this provision, and should the Council fail to authorize an additional position, the person in the class to which the appointment is to be made having the least seniority in that class and higher classes shall be reassigned to a position in any other lower class of positions in which that person has displacement rights based on seniority or, at that person's option, may be transferred to any vacant position in the Office at the same or lower level class for which that person is found by the City Attorney to be qualified.

DISCIPLINARY PROCEDURES FOR THE FIRE DEPARTMENT

Sec. 1060. Rights and Due Process Procedures.

(a) **Applicability; Rights.** For purposes of this section, the term "member" refers to all officers and firefighters of the Fire Department. This section shall not apply to any member of the department who has not completed the period of probation in his or her entry position as provided in Section 1011(a). Members not covered by this section who are otherwise entitled by law to a hearing or appeal with regard to proposed or imposed discipline shall be provided a hearing or appeal under rules promulgated by the Fire Chief.

The right of a member of the Fire Department, except the Fire Chief and any other member in a position exempt from civil service, to hold his or her office or position and to receive compensation attached to the office or position is hereby declared to be a substantial property right of which the holder shall not be deprived arbitrarily or summarily, nor other than as provided in this section. No member of the Fire Department shall be suspended, removed, or otherwise separated from the service of the Fire Department (other than by resignation), except for good and sufficient cause shown upon a finding of guilty of the specific charge or charges assigned as cause or causes after a full, fair and impartial hearing before a Board of Rights except as provided in subsection (b) and (h) of this section. The charges must be filed within one year of the department's discovery of the act committed or omitted by a member and in no event later than two years from the date of the act or omission. No case of suspension with loss of pay shall be for a period exceeding six months.

(b) **Temporary Relief from Duty; Suspension.** After following predisciplinary procedures otherwise required by law, the Fire Chief may:

(1) temporarily relieve from duty any member pending a hearing before and decision by a Board of Rights on any charge or charges pending against the member; or

- (2) suspend the member for a total period not to exceed 30 days with loss of pay and with or without reprimand, subject to the right of the member to a hearing before a Board of Rights. In the event the member files an application for a hearing before a Board of Rights as provided in this section, the suspension shall automatically become a temporary relief from duty pending hearing and decision by the Board of Rights. In the event that the member fails to apply for a hearing within the period prescribed, he or she shall be deemed to have waived the hearing and the suspension shall remain effective, unless the Fire Chief requires that a hearing be held.
- (3) cancel such temporary relief from duty, or following such relief from duty, restore the member to duty with or without restrictions pending a hearing before a Board of Rights.

(c) **Complaint.** In the event any order of relief from duty or suspension is made, the order shall contain a statement of the charges assigned as causes. The Fire Chief shall, within five days after the order is served as provided in subsection (d), file with the Board of Fire Commissioners, a copy of a verified written complaint upon which the order is based, with a statement that a copy of the order and verified complaint was served upon the accused. The complaint shall be verified by the oath of the Fire Chief and shall contain a statement in clear and concise language of all the facts constituting the charge or charges. If the complaint and proof of service are not filed within the five day period prescribed, the order of temporary relief from duty or suspension shall be void and of no effect and shall be automatically revoked, and the accused member restored to duty with the department without loss of pay and without prejudice, as if no order of relief from duty or suspension had been made.

(d) **Service.** The service of any notice, order or process mentioned in this section, other than service of subpoena, may be made either by handing the member a copy personally or by sending a copy by certified mail to his or her last known address of record with the Fire Department if, after due diligence, the member cannot be found.

(e) **Application for Hearing.** Within five days after personal service upon the accused of a copy of the verified complaint or within ten days after service by certified mail, the accused member may file with the Fire Chief a written application for a hearing before and decision by a Board of Rights.

(f) **Time and Place of Hearing.** Upon the selection of a Board of Rights, the Fire Chief shall set the time (not less than five nor more than ten days thereafter) and designate a place where the hearing is to be held, and shall cause notice thereof to be served upon the accused. After the Board of Rights has first convened, the board may continue the hearing of the matter to a specific date, and no other notice need be given, except as required by order of the board.

(g) **Composition of Board of Rights.** The Board of Rights shall be composed of three officers of the rank of battalion chief or higher. Upon the filing of the request for hearing before a Board of Rights, the accused shall draw six cards from a box containing the names of all officers who are qualified to be members of the board (except the names of the accused, the accuser, the Fire Chief, Deputy Chiefs, and other officers who may be prejudiced or disqualified by reason of being a material

witness to the facts constituting the charges made), and shall select any three of the six names drawn to be members of the Board of Rights, rejecting the three names not selected by replacing them in the box.

(h) **Failure to Request a Hearing; Failure to Appear.** In the event the accused fails to request a hearing before a Board of Rights within the period prescribed, the Fire Chief may require a hearing to be held before a Board of Rights and may for that purpose, within five days after the expiration of such period, draw three names from a box to constitute the board.

If a Board of Rights has been constituted for the purpose of hearing and the accused, without reasonable excuse, fails, or refuses to appear before the Board of Rights at the time and place designated, the Fire Chief may, at his or her discretion, either direct the Board of Rights to proceed with the hearing in the absence of the accused, or the Fire Chief may, without a hearing, impose the penalty of suspension or removal as he or she deems fit and proper. The Fire Chief shall cause notice of the action to be served upon the accused and shall file a statement of the action with the Board of Fire Commissioners within five days.

If the accused and the Fire Chief both fail to draw and create a Board of Rights within the period prescribed in any case of temporary relief from duty pending hearing, the temporary relief from duty shall be null and void.

(i) **Oaths, Affirmations and Subpoenas.** Each member of the Board of Rights shall have the power to administer oaths and affirmations, in any investigation or proceeding pending before the board, examine witnesses under oath, and compel the attendance of witnesses and the production of evidence.

Upon demand of any member of the Board of Rights, the City Clerk shall issue a subpoena in the name of the City, and attest the same with the corporate seal. The subpoena shall direct and require the attendance of the witnesses or the production of evidence at the time and place specified. It shall be the duty of the Chief of Police to cause all such subpoenas to be served upon the person or persons required to attend or produce evidence. It shall be the duty of the Council to provide suitable penalties for disobedience of such subpoenas, and the refusal of witnesses to testify or produce evidence.

(j) **Legal Advice.** Upon the request of any two members of the Board of Rights, the board's chairperson shall request an attorney from the City Attorney's office who shall advise the board on legal matters during any session of the hearing. The attorney need not be physically present at the hearing, but may advise the Board telephonically or through other means of communication. The same attorney advising the Board of Rights shall not advise the department's advocate in the same matter.

(k) **Burden of Proof.** In Board of Rights proceedings, the Fire Department shall have the burden of proving each charge, including those based on conduct punishable in whole or in part as a crime, by a preponderance of the evidence.

(l) **Representation; Transcript.** At the hearing, the accused shall have the right to appear in person and by counsel or representative, or both, and make defense to the charges and may produce witnesses and cross-examine witnesses. The accused shall have the right and privilege to select and name any other member of the department of any rank not higher than the rank of captain (who is not otherwise disqualified by reason of prejudice or being a party to the action in any capacity) to act as his or her

defense representative at the hearing. The Fire Chief must immediately assign the member selected to act as defense representative, and it is hereby made the duty of such member to use every legal means available and exercise the best efforts of which he or she is capable to defend the accused at the hearing.

All testimony at the hearing shall be given under oath, reported by a stenographer and transcribed and the member shall be entitled, upon request, to a certified copy of the transcript without charge or payment of fee.

(m) **Findings and Decision.** The Board of Rights shall, at the conclusion of the hearing, make its findings of guilty or not guilty on each charge which must be based only upon the evidence presented at the hearing. If the accused is found not guilty, the board shall order his or her restoration to duty without loss of pay and without prejudice, and the order shall be self-executing and immediately effective. If the accused is found guilty, the Board of Rights shall, by order, prescribe its penalty of:

- (1) suspension for a definite period not exceeding six months with total loss of pay, and with or without reprimand; or
- (2) reprimand without further penalty; or
- (3) removal from office or position.

The decision and order must be certified in writing and a copy immediately delivered to the Fire Chief.

(n) **Personnel History and Records.** The departmental personnel history and records of the accused shall be available to the Board of Rights only if the accused has been found guilty of any charge upon which he or she was heard by the Board of Rights, and then only for the purpose of determining a proper penalty, except that the medical package of the accused shall not be considered by the board with regard to penalty unless such information is relevant to a charge as to which there was a finding of guilty. At the penalty stage, the board must look to the nature and gravity of the offense of which the accused has been found guilty and may at its discretion review the departmental personnel history and record of the accused, provided that no item or entry in the record may be considered by the board except in the presence of the accused, unless the member has failed or refused to be present, and then only if the accused has been given a fair and reasonable opportunity to explain the item or entry.

(o) **Imposition; Reduction of Penalty.** Within five days of delivery to the Fire Chief of a certified copy of the decision and order of the Board of Rights, the Fire Chief shall either execute the order, or the Fire Chief may, at his or her discretion and in lieu of the order, impose a penalty less severe than that ordered by the Board of Rights, but may not impose a greater penalty. In the case of a suspension or removal, the Fire Chief shall cause a copy of the notice of the penalty to be served upon the accused and shall file a statement of such action with the Board of Fire Commissioners within five days thereafter.

(p) **Effective Date of Penalty.** In any case of suspension or removal prescribed by the Board of Rights, or by the Fire Chief if no hearing is held before a Board of Rights, the time of the suspension shall be computed from the first day the member was suspended or relieved from duty pending hearing before and decision by the Board of Rights and the removal shall relate back to and be effective as of the date of the relief from duty pending hearing before and decision by the Board of Rights. Notwithstanding the above, the Fire Chief and the member may agree to an alternative date for the commencement of the period

of suspension and/or may agree to non-consecutive dates for the term of the suspension.

(q) **Double Jeopardy; Exoneration.** No member shall be twice tried for the same offense, except upon his or her request. In any case of exoneration of the accused after a hearing before a Board of Rights, exoneration shall be without prejudice to the member.

(r) **Rehearing.** At any time within three years after the effective date of removal, the removed member may file a request with the Fire Chief to be reheard or to be heard on the cause of his or her removal, together with a supporting affidavit setting forth in clear and concise language the reasons or grounds for a hearing or rehearing. The Fire Chief shall consider and make a decision upon the request within 30 days after filing. If the Fire Chief determines that good reason or cause exists for a hearing or rehearing, the Fire Chief shall without unnecessary delay, cause a Board of Rights to be constituted for the purpose of hearing and deciding upon the matter. The Board of Rights shall, at the conclusion of the hearing, render and certify its findings (independent of any previous findings by any other Board of Rights, or any other court, board or other tribunal, or any investigation or report of or discretion exercised by the Fire Chief in cases where no hearing was had before a Board of Rights), based only upon the evidence presented at such hearing. The board shall make and certify its decision and order in writing, and deliver a copy to the Fire Chief. The Fire Chief shall proceed in the same manner as provided for above after decision by a Board of Rights.

(s) **Other Legal Rights.** This section shall not be construed to affect any rights a member may have to assert other legal rights or remedies in relation to his or her office or position or to the compensation attached thereto, or to appeal to or be heard or tried by any court or other tribunal of competent jurisdiction.

(t) **Restoration to Duty.** Any person restored to duty or reinstated in his or her office or position after suspension or removal, shall be entitled to receive full compensation from the City as if the suspension or removal had not been made, except that such compensation shall not be for more than one year's salary unless otherwise provided by law.

(u) **Effects of New Charter.** This section shall not apply to the discipline of any member who was relieved from duty or who appealed a suspension to a Board of Rights prior to its effective date. Matters arising out of such relief from duty or suspension shall be adjudicated in accordance with applicable prior Charter provisions.

DISCIPLINARY PROCEDURES FOR THE POLICE DEPARTMENT

Sec. 1070. Rights and Due Process Procedures.

(a) **Applicability; Rights.** As used in this section, member shall mean an employee of the Police Department who has peace officer status as defined in California Penal Code Section 830.1. The provisions of this section shall not apply to any member of the Police Department who has not completed the period of probation in his or her entry level position, as provided in Section 1011(a). Non-tenured Police officers, where otherwise entitled by law to a hearing or appeal with regard to proposed or imposed discipline, shall be provided a hearing or appeal under procedures promulgated by the Chief of Police.

The rights of a member, except the Chief of Police and any other member in a position exempt from civil service, to hold his or her office or position and to receive compensation attached to the office or position is hereby declared to be a substantial property right of which the holder shall not be deprived arbitrarily or summarily, nor other than as provided in this section. No member shall be suspended, demoted in rank, suspended and demoted in rank, removed, or otherwise separated from the service of the department (other than by resignation), except for good and sufficient cause shown upon a finding of guilty of the specific charge or charges assigned as cause or causes after a full, fair, and impartial hearing before a Board of Rights, except as provided in subsections (b) and (i). No case of suspension with loss of pay shall be for a period exceeding three months.

(b) **Temporary Relief from Duty; Suspension; Demotion.** After following predisciplinary procedures otherwise required by law, the Chief of Police may:

- (1) temporarily relieve from duty any member pending a hearing before and decision by a Board of Rights on any charge or charges pending against the member, except that a member so relieved shall not suffer a loss of compensation until 30 days after the date on which the member was served with the charge or charges, except as provided for in subsection (q). If the hearing before the Board of Rights for a member who has been temporarily relieved from duty is not completed within 60 days of such relief from duty, and such failure to complete the hearing is not due to any delay or continuance caused by the member or his or her counsel, the member shall not suffer a loss of pay for a further period of 30 days. There shall be a calendar priority for Board of Rights hearings when a member is subject to relief from duty pending a hearing. The Chief of Police in his or her sole discretion shall have the power to cancel temporary relief from duty, or following relief from duty, to restore the member to duty with or without restrictions pending hearing; or
- (2) suspend the member for a total period not to exceed 30 days with loss of pay and with or without reprimand, subject to the right of the member to a hearing before a Board of Rights; or
- (3) demote in rank, with or without suspension or reprimand or both, any member, subject to the right of the member to an appeal to a Board of Rights as provided in this section.

In the event the member suspended or demoted in rank under this subsection files an application for a hearing by a Board of Rights as provided in this section, the suspension or demotion shall automatically be stayed pending hearing and decision by the Board of Rights. In the event that the member fails to apply for a hearing within the period prescribed, the member shall be deemed to have waived a hearing, and the suspension or demotion shall remain effective unless the Chief of Police requires that a hearing be held.

(c) **Limitations Periods.** No member shall be discharged, suspended, demoted in rank, or suspended and demoted in rank for any conduct that was discovered by the department and brought to the attention of the Chief of Police more than one year prior to the filing of the complaint against the member under subsection (d) or falls outside of the applicable limitations period below. Such limitations period shall have reference to the date on

which the Chief files a complaint against a member under subsection (d). For the purpose of ascertaining such period only, conduct, wherever it occurred in fact, shall be deemed to have occurred within the City. For an administrative charge based substantially or entirely on conduct which may be punishable criminally, the limitations period shall be based upon the most comparable, applicable penal law—federal, state, county, or City.

(1) If violation of a law is punishable as a felony, the limitations period shall be that period established for the crime. Where no limitations period is established for the felony, there shall be no limitations period for administrative purposes. Conduct treated either as a felony or misdemeanor under the applicable penal law shall be regarded as felonious.

(2) For an administrative charge based substantially or entirely on conduct punishable as a misdemeanor, the limitations period shall be three years from the occurrence. Conduct treated as either a misdemeanor or an infraction under the applicable penal law shall be regarded as a misdemeanor.

(3) For all other misconduct, the limitations period shall be two years from the occurrence.

(d) **Complaint.** Any order of relief from duty, cancellation of relief from duty pending a Board of Rights hearing, suspension, demotion in rank, or suspension and demotion in rank shall contain a statement of the charges assigned as causes. The Chief of Police shall, within five days after the order is served as provided in subsection (e), file with the Board of Police Commissioners a copy of a verified written complaint upon which the order is based, with a statement that a copy of the order and verified complaint was served upon the accused. The complaint shall be verified by the oath of the Chief of Police and shall contain a statement in clear and concise language of all the facts constituting the charge or charges.

(e) **Service.** The service of any notice, order, or process mentioned in this section, other than service of subpoena, may be made by handing the accused a copy personally. If a copy of any notice, order or process cannot with reasonable diligence be personally served, substitute service may be made in accordance with policies adopted by the department.

(f) **Application for Hearing.** Within five days after personal service upon the accused of a copy of the verified complaint, or within ten days after service in any other manner provided for in this section, the member may file with the Chief of Police a written application for a hearing before and decision by a Board of Rights.

(g) **Time and Place of Hearing.** Upon the selection of a Board of Rights, the Chief of Police shall set the time for (not less than 10 nor more than 30 days thereafter) and designate a place where the hearing is to be held, and shall cause notice thereof to be served upon the accused. After the Board of Rights has first convened, the board may continue the hearing of the matter to a specific date, and no other notice need be given, except as may be required by order of the board.

(h) **Composition of Board of Rights.** The Board of Rights shall be composed of two officers of the rank of captain or above and an individual who is not a member of the department (the civilian member). The members selected as prescribed in this section shall constitute the board for the purpose of hearing and deciding upon the matter for which it was specially drawn. The

qualifications of, selection procedures for, and compensation of the civilian members shall be established by ordinance. Upon the filing of the request for a hearing before a Board of Rights, as provided in subsection (f), the accused shall draw four cards from a box containing the names on cards of all officers who are qualified to be members of the Board of Rights (except the names of the accused, accuser, the Chief of Police, any staff or command officer specifically exempted by the Chief of Police in accordance with the provisions of the Board of Rights Manual or successor document, and any other officer who may be prejudiced or disqualified by reason of being a material witness to the facts constituting the charges made, otherwise disqualified for cause as determined by the Chief, or who has a conflict of interest). The accused shall select any two of the four names drawn to be members of the Board of Rights, rejecting the two names not selected by replacing them in the box.

(i) **Failure to Request a Hearing; Failure to Appear.** In the event the accused fails to request a hearing before a Board of Rights as provided in subsection (f) within the period prescribed, the Chief may require a hearing to be held before a Board of Rights and may for that purpose, within five days after the expiration of such period, draw two names from a box to sit on the board.

If a Board of Rights has been constituted for the purpose of hearing and the accused, without reasonable excuse, fails or refuses to appear before the board at the time and place designated, the Chief of Police may, at his or her discretion, either direct the Board of Rights to proceed with the hearing in the absence of the accused, or the Chief may, without a hearing, impose a penalty of suspension, demotion in rank, suspension and demotion in rank, or removal as he or she deems fit and proper. The Chief shall cause notice of the action to be served upon the member and shall file a statement of the action with the Board of Police Commissioners within five days.

If the accused and Chief both fail to draw and create a Board of Rights within the period prescribed, the complaint shall be null and void.

(j) **Oaths, Affirmations and Subpoenas.** Each board member shall have the power to administer oaths and affirmations in any investigation or proceeding pending before a Board of Rights, examine witnesses under oath, and compel the attendance of witnesses and the production of evidence by subpoena. Upon demand of any board member, the City Clerk shall issue a subpoena in the name of the City and attest the same with the corporate seal. The subpoena shall direct and require the attendance of the witnesses or the production of evidence, at the time and place specified. It shall be the duty of the Chief of Police to cause all such subpoenas to be served upon the person or persons required to attend or produce evidence. It shall be the duty of the Council to provide suitable penalties for disobedience of such subpoenas and the refusal of witnesses to testify or produce evidence.

(k) **Legal Advice; Ex Parte Communication.** Upon the request of any two board members, the board's chairperson shall request an attorney from the City Attorney's office who shall advise the board on legal matters during any session of the hearing. The attorney need not be physically present at the hearing, but may advise the board telephonically or through other

means of communication. The attorney may not advise the department's advocate in the same matter.

Ex Parte communication with members of a Board of Rights regarding the subject matter of the hearing while proceedings are pending is prohibited. No person shall attempt to influence the decision of a Board of Rights except during the hearing and on the record.

(l) **Burden of Proof.** In Board of Rights proceedings, the department shall have the burden of proving each charge, including those based on conduct punishable in whole or in part as a crime, by a preponderance of the evidence.

(m) **Representation; Transcript; Evidence.** At the hearing, the accused shall have the right to appear in person and by counsel or representative, or both, and make defense to the charges and may produce witnesses and cross-examine witnesses. The accused shall have the right and privilege to select and name any other officer of the department of any rank not higher than the rank of lieutenant (who is not otherwise disqualified by reason of prejudice or being a party to the action in any capacity) to act as his or her defense representative at the hearing. The Chief of Police must immediately assign the officer selected to act as defense representative, and it is hereby made the duty of such officer to use every legal means available and exercise the best efforts of which he or she is capable to defend the accused at the hearing.

All testimony at the hearing shall be given under oath and shall be reported by a stenographer for possible transcription. The accused shall be entitled, upon request, to a certified copy of the transcript without charge. When the report is transcribed, the original transcript shall be placed on file in the department.

Evidence of prior acts, irrespective of whether they were associated with a personnel complaint against the accused and irrespective of the resolution of the complaint, may be considered in the discretion of a Board of Rights if relevant to the charges, such as, if the prior acts tend to prove that the conduct charged is consistent with a pattern of conduct.

(n) **Finding and Decision.** The Board of Rights shall at the conclusion of the hearing make findings of guilty or not guilty on each charge, which findings shall be based only upon the evidence presented at the hearing. If the accused is found not guilty, the board shall order the member's restoration to duty without loss of pay and without prejudice, and the order shall be self-executing and immediately effective. If the accused is found guilty, the Board of Rights shall prescribe its penalty by written order of:

- (1) suspension for a definite period not exceeding three months with total loss of pay, and with or without reprimand; or
- (2) demotion in rank, with or without suspension or reprimand or both; or
- (3) reprimand without further penalty; or
- (4) removal.

The decision and order must be certified in writing and a copy delivered to the Chief of Police as soon as practicable, but in no event later than ten days after the decision of the Board of Rights. Whenever a Board of Rights prescribes a penalty of suspension or removal and the member is not currently relieved from duty, the Chief may temporarily relieve the member from duty pending execution of the order.

For purposes of this section, demotion in rank shall mean reduction in civil service classification. The provisions of this section shall not apply to reductions in pay grade or similar personnel actions caused by reassignment, deselection from bonus positions, and the like. Reductions shall be administered under policies adopted by the department.

(o) **Personnel History and Records.** The departmental personnel history and records of the accused shall be available to the Board of Rights only if the accused has been found guilty of any charge upon which the member was heard or tried by the Board of Rights, and then only for the purpose of determining a proper penalty. At the penalty stage, the board may consider the entire departmental personnel history and record of the accused, which shall include, among other things, information concerning personnel complaints against the accused that were sustained and information derived from complaints against the accused that were not resolved, to the extent and in the manner allowed by department policy except that the medical package of the accused shall not be considered by the board with regard to penalty unless such information is relevant to a charge as to which there was a finding of guilty. In prescribing the penalty, the board shall look to the nature and gravity of the offense of which the member has been found guilty and may at its discretion review the departmental personnel history and record of the member. No item or entry in the record may be considered by the board except in the presence of the member and only where the member has been given a fair and reasonable opportunity to explain any item or entry unless the member has failed or refused to be present.

(p) **Imposition; Reduction of Penalty.** Within five days of delivery of a certified copy of the decision and order of a Board of Rights to the Chief of Police, the Chief shall either execute the order or may, at his or her discretion and in lieu of the order, impose a penalty less severe than that ordered by the Board of Rights, but may not impose a greater penalty. In the case of a demotion, suspension, demotion and suspension, or removal, the Chief shall cause a copy of the notice of the penalty to be served upon the member and shall file a statement of this action with the Board of Police Commissioners within five days.

(q) **Effective Date of Penalty.** A removal prescribed by the Board of Rights, or by the Chief of Police if no hearing is had before a Board of Rights, shall relate back to and be effective as of the date of the relief from duty pending hearing before and decision by the Board; however where a final decision has been made by the Chief of Police prior to the end of the 30 day period referred to in subsection (b) (1), the removal shall be effective immediately.

The effective date of any suspension or demotion prescribed by the Board of Rights, or by the Chief if no hearing is had before a Board of Rights, shall be determined by policies adopted by the department, with practices in effect on the effective date of the most recent amendment to this section remaining in effect until the adoption; provided, that in case of suspension where there has been a temporary relief from duty, the 30 day period referred to in subsection (b) (1) or any portion thereof in which the member received compensation shall not be counted as part of the suspension. Nothing in this section shall preclude the imposition of a suspension without pay when a final decision is made prior to the end of the 30 day period.

(r) **Calendar Days.** Except as otherwise provided in this section, all time periods, including those of limitation, shall be calculated in calendar days. When the last day of any such period falls on a weekend or City holiday, the period shall extend to the next business day.

(s) **Double Jeopardy; Exoneration.** No member shall be twice tried for the same offense, except upon the request of the member. In any case of exoneration of the accused after a hearing before a Board of Rights, the exoneration shall be without prejudice to the member.

(t) **Rehearing.** At any time within three years after the effective date of removal, the removed member may file a request with the Chief of Police to be reheard or to be heard on the cause of the member's removal, together with a supporting affidavit setting forth in clear and concise language the reasons or grounds for a hearing or rehearing. The Chief shall consider and make a decision on the request and affidavit within 30 days after filing. If the Chief determines that good reason or cause exists for a hearing or rehearing, the Chief shall, without unnecessary delay, cause a Board of Rights to be constituted for the purpose of hearing and deciding upon the matter. The Board of Rights shall, at the conclusion of the hearing, render and certify its findings (independent of any previous findings by any other Board of Rights, or any other court, board, or other tribunal, or any investigation or report of or discretion exercised by the Chief in such cases where no hearing was had before a Board of Rights) based only upon the evidence presented at the hearing. The board shall make and certify its decision and order in writing and deliver

a copy to the Chief. The Chief shall proceed in the same manner as provided for above after decision by a Board of Rights.

(u) **Other Legal Rights.** This section shall not be construed to affect any rights a member may have to assert other legal rights or remedies in relation to his or her office or position or to the compensation attached thereto, or to appeal to or be heard or tried by any court or other tribunal of competent jurisdiction.

(v) **Restoration to Duty.** A member restored to duty after removal or temporary relief from duty, or whose suspension or demotion has been overturned in whole or in part, shall be entitled to receive full compensation from the City as if the nullified penal action had not been taken; except that such compensation shall not exceed one year's salary unless otherwise required by law.

(w) **Independence of Board of Rights.** Members of a Board of Rights are to make decisions based solely on the evidence before them. No sworn member of a Board of Rights shall be subject to any benefit, retaliation or adverse personnel action based upon their findings or recommendations at a Board of Rights hearing. No civilian member of a Board of Rights shall be coerced or intimidated as a result of findings or recommendations at a Board of Rights hearing.

(x) **Effects of New Charter.** This section shall not apply to the discipline of any member who was relieved from duty or who appealed a demotion or suspension or both to a Board of Rights prior to its effective date. Matters arising out of such relief from duty, demotion or suspension shall be adjudicated in accordance with applicable prior Charter provisions.

ARTICLE XI PENSION AND RETIREMENT SYSTEMS

GENERAL PROVISIONS FOR PENSION AND RETIREMENT SYSTEMS

Sec. 1100. Applicability.

Each pension or retirement department or plan set forth in this Article shall be governed by the following:

(a) provisions specific to each department or plan set forth in this Article or elsewhere in the Charter; and

(b) these General Provisions for Pension and Retirement Systems.

Additionally, the General Provisions for Departments contained in Article V shall apply to the departments listed in Section 1102(a) to the extent not inconsistent with this Article.

Sec. 1102. Pension and Retirement Departments and Plans.

(a) **Departments of the City.** The following pension and retirement system departments, created in Section 500, are included within this Article:

Fire and Police Pension System

Los Angeles City Employees' Retirement System (LACERS)

(b) **Plan Created.** The following retirement system is created within the Department of Water and Power and included within this Article:

Water and Power Employees' Retirement Plan (WPERP)

(c) **Boards Created.** Each of the pension and retirement system departments or plans set forth in subsections (a) and (b) shall be under the management and control of a board of commissioners. The boards shall have these names:

Board of Fire and Police Pension Commissioners

Board of Administration of the Los Angeles City Employees' Retirement System

Board of Administration of the Water and Power Employees' Retirement Plan

Sec. 1104. Pension and Retirement System Boards.

(a) **Board of Fire and Police Pension Commissioners.** The Board of Fire and Police Pension Commissioners shall consist of nine members. Five shall be appointed by the Mayor, subject to the approval of the City Council. One shall be an active sworn member of the Fire Department as defined in this Article and elected by the members of the Fire Department. One shall be an active sworn member of the Police Department as defined in this Article and elected by the members of the Police Department. One shall be a retired member of the Fire Department as defined in this Article and elected by the retired members of the Fire Department. One shall be a retired member of the Police Department as defined in this Article and elected by the retired members of the Police Department.

(b) **Board of Administration for LACERS.** The Board of Administration for LACERS shall consist of seven members. Four members, one of whom shall be a retired member of the system, shall be appointed by the Mayor subject to the approval of the Council. Two members shall be active employee members of the system elected by the active employee members. One shall be a retired member of the system elected by the retired members of the system.

(c) **Board of Administration for WPERP.** The Board of Administration for the WPERP shall consist of seven members.

Three members shall be *ex officio*, three members shall be elected, and one member shall be appointed. The *ex officio* members shall be the General Manager of the Department, the Chief Accounting Employee of the Department, and one Board of Water and Power Commissioner selected by that board. Three elected members shall be active employee members of the system elected by the active employee members. One member shall be a retired member of the system appointed by the Board of Water and Power Commissioners.

(d) **Terms of Board Members.** For the Board of Fire and Police Pension Commissioners and the Board of Administration for LACERS, each elected board member shall serve for a term of five years. For the Board of Administration for WPERP, the appointed retired member and each elected board member shall serve for a term of three years. The terms of board members on all boards shall be staggered as determined by each board. In case of a vacancy of an appointed seat on any board, the appointing authority for the seat shall appoint a member to serve out the unexpired term of office. In case of a vacancy of an elected seat on any board that has more than six months remaining before expiration of the term, the applicable board shall conduct an election to select a member of the group represented by the vacant seat to serve out the unexpired term of office.

(e) **Restrictions on Board Membership.** No person who is employed in any capacity by the LACERS or by WPERP shall be eligible to file for election to or be appointed to the board of their respective systems.

Sec. 1106. Powers and Duties of Pension and Retirement Boards.

Consistent with Article XVI, Section 17 of the California Constitution, and any successor constitutional provision, and subject to the limitations set forth elsewhere in the Charter concerning anything other than pension and retirement system administration and control over system investments, each pension and retirement board of the City shall:

(a) **Administration of the Pension or Retirement System.** Have sole and exclusive responsibility to administer its system for the following purposes:

- (1) to provide benefits to system participants and their beneficiaries and to assure prompt delivery of those benefits and related services;
- (2) to minimize City contributions; and
- (3) to defray the reasonable expenses of administering the system.

The duty to system participants and their beneficiaries shall take precedence over any other duty.

(b) **Assets.** Have sole and exclusive fiduciary responsibility over the assets of its system which are held in trust for the exclusive purposes of:

- (1) providing benefits to system participants and their beneficiaries; and
- (2) defraying the reasonable expenses of administering the system.

(c) **Prudent Person Standard.** Discharge its duties with respect to its system with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person

acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

(d) **Investments.** Diversify the investments of the system so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly not prudent to do so.

(1) **Investment Statement.** The board of each pension and retirement system shall adopt a statement of investment objectives and policies for the system. The statement shall include at least the desired rate of return and acceptable levels of risk for each asset class, asset allocation goals, guidelines for the delegation of authority, and information of the types of reports to be used to evaluate investment performance. At least annually, the board shall review the statement and change or reaffirm it. After each annual review, the board shall forward the statement to the Mayor and Council for informational purposes.

(2) **Performance Evaluation.** At least annually, the board of each pension and retirement system shall retain an outside performance evaluation firm to calculate the returns on all of the system investments.

(e) **Actuarial Services.** Have the sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of its systems in accordance with recognized actuarial methods.

(f) **Rules and Regulations.** Have the power to adopt any rules, regulations, or forms it deems necessary to carry out its administration of a pension or retirement system or assets under its control.

Sec. 1108. General Manager of Pension or Retirement Systems.

(a) **Applicability.** Except as provided in this section, the provisions regarding general managers contained in Article V shall apply to the general managers of the pension and retirement systems of the City.

(b) **Appointing Authority.** The Board of Fire and Police Pension Commissioners and the Board of Administration of the Los Angeles City Employees' Retirement System shall appoint their respective general manager subject to confirmation by the Mayor and Council and shall remove their respective general manager subject to confirmation by the Mayor. A general manager removed pursuant to the provisions of this section may appeal the removal to the Council in the manner provided in Section 508(e).

(c) **Annual Review.** The Board of Fire and Police Pension Commissioners and the Board of Administration for the Los Angeles City Employees' Retirement System shall evaluate their respective general manager at least annually and shall set or adjust the compensation of the general manager with guidelines established by Council. Each board shall forward a copy of its performance evaluation and salary determination to the Mayor and Council.

Sec. 1110. Control of Pension and Retirement Funds.

(a) **Special Funds.** Each pension and retirement board shall have a special trust fund or funds on deposit with the Treasurer for the purpose of segregating its revenues from the other money of the City.

(b) **Control of Special Funds.** The board of each pension and retirement system shall have control over their respective funds. Transfers or expenditures shall be drawn upon funds only upon demands signed by the chief accounting employee of the board. All payments from the funds shall be made upon demands prepared and approved in accordance with the provisions of the Charter.

(c) **Master Trustee or Custodian.** Each pension and retirement board, in its sole discretion, may designate one or more master trustees or custodians to hold securities and funds of the system for the purpose of carrying out the investment policies and decisions of the board.

(d) **Fund Earnings.** The money in any pension or retirement system fund shall be invested at the sole and exclusive direction of the respective board and all earnings shall be credited to the respective funds by the Treasurer or the Master Trustee or Custodian designated by the respective board.

Sec. 1112. Management Audits.

(a) **Conduct of Audit.** The Mayor, Council, and Controller at least once in every five years, shall jointly require a management audit to be made of the business and property of each of the pension and retirement systems by an independent qualified management auditing firm. Each audit shall examine whether the pension or retirement system is operating in the most efficient and economical manner and shall evaluate the asset allocation of the system. The firm employed to conduct the audit shall be selected by the Mayor, Council and Controller.

(b) **Audit Results.** A copy of the report of each audit shall be transmitted to the Mayor, Council and the board of the audited pension or retirement system. Upon receipt of the audit, Council may request that some or all of the audit recommendations be implemented by a board, but the board shall retain sole and exclusive authority over administration of its system and assets to the extent provided in Article XVI, Section 17 of the California Constitution.

Sec. 1114. Council Veto of Board Decisions.

The right of Council to veto board decisions provided in Section 245 shall not apply to decisions of the City's pension and retirement boards.

Sec. 1116. Right to Retire While on Military Leave.

Any officer or employee who, while on Military Leave as defined in Section 1023 of the civil service provisions of the Charter, is or becomes entitled to retire on pension or is or becomes entitled to any benefits under any provision of this Article, may exercise such rights or claim such benefits while on Military Leave.

Sec. 1118. Gender and Number.

As used in this Article, the masculine, feminine, or neuter gender, and the singular or plural number, shall each be deemed to include the others unless the context clearly indicates otherwise.

Sec. 1120. Purchases of Real Property.

(a) **Real Estate Held in Board Name.** Notwithstanding the provisions of Sections 105 and 385 of the Charter, title to any real property or interest in real property shall be held in the name of the applicable board and any real property or interests owned by a board may be sold, leased, or encumbered by the board.

(b) **Board Names for Real Estate Purposes.** The pension and retirement boards shall hold real property in the following names:

Board of Fire and Police Pension Commissioners of the City of Los Angeles
Board of Administration of the Los Angeles City Employees' Retirement System
Board of Administration of the Water and Power Employees' Retirement Plan of the City of Los Angeles

(c) **Voting Procedure for Real Estate Investments.** Any purchase of real property by a pension or retirement board shall require approval by a majority vote of all its members but one of the affirmative votes must be cast by an elected employee member of the board.

PART 1
LOS ANGELES CITY EMPLOYEES' RETIREMENT SYSTEM

Sec. 1150. Los Angeles City Employees' Retirement System (LACERS).

There is hereby created, established and adopted a retirement system for all officers and employees of the City of Los Angeles not now included within any other pension or retirement system under the provisions of this Article. The benefits of the System's Plan shall be adopted by ordinance in accordance with Section 1168 of this Part 1 and shall be set forth in the City Administrative Code.

Sec. 1152. Definitions.

For the purpose of this Part 1 concerning the LACERS, the following words and phrases shall have the meaning ascribed to them in this section unless a different meaning is clearly indicated by the context:

(a) **Accumulated Contributions:** The total of the amounts paid into the fund by the member and any interest credited to the member's account.

(b) **Beneficiary:** Persons entitled to receive a benefit from the Plan.

(c) **Member:** An employee of the City of Los Angeles who meets the membership requirements of the Plan as further defined in ordinance(s) establishing the benefits of the Plan.

(d) **Plan:** The Los Angeles City Employees' Retirement System as adopted by the Council under authority of Section 1168.

(e) **Retired Member:** A member who has ceased employment with the City of Los Angeles and is receiving a regular monthly benefit payment from the Plan.

(f) **Retirement Fund:** The trust fund established for the LACERS separate and apart from the other money of the City.

(g) **System:** The Los Angeles City Employees' Retirement System (LACERS).

Sec. 1154. Retirement Fund.

There shall be a fund known as Los Angeles City Employees' Retirement Fund for the payment of administration expense, retirement allowances and other benefits of the System, which fund shall consist of all money paid into the fund in accordance with the provisions of this Part 1, and earnings from investments.

Sec. 1156. Transfer of Released Liability for Transferred Employees.

If any City function and System Members who perform that function are transferred to another public agency, and if the receiving public agency affords System Members the opportunity to secure retirement credit for their City service in that public agency's retirement system, then the Released Liability to this System for the transferred System Members who elect to transfer their accumulated contributions from this System to the retirement system of the receiving public agency shall be made available for payment on account of the required employer contribution for the retirement system of the receiving public agency. The Released Liability shall be made available in the manner specified in the ordinance authorizing the transfer of the City function but in no event shall the amount of money made available exceed the required employer contributions on account of those System Members who request the transfer of their accumulated contributions.

For the purpose of this section, the phrase Released Liability shall mean the City's share of the actuarially determined present value of benefits earned to the date of the transfer under the LACERS and shall be based upon the rates of withdrawal and other actuarial assumptions in effect on the date of the transfer and an assumed interest factor as determined by the Board of Administration which reflects, as closely as practicable, the interest rate at which member contributions and the City reserves were credited as provided in Section 1162 for the six-month period immediately preceding the date of the transfer.

Sec. 1158. Actuarial Standards.

(a) **Reserve Basis.** The Board of Administration shall adopt an actuarial report showing the cost of maintaining, upon a reserve basis, the System and Fund, and shall, at intervals of not to exceed five years, cause to be made an actuarial investigation into the mortality, service, and compensation experience of the members and beneficiaries, and shall further cause to be made an actuarial valuation of the assets and liabilities of the Retirement Fund. The board shall keep in convenient form any data necessary for the actuarial valuation of the Retirement Fund established in Section 1154.

(b) **Setting Actuarial Assumptions.** Upon the basis of the investigation and valuation, the Board of Administration shall:

- (1) adopt for the System an interest rate and mortality, service and other tables as deemed necessary by the board; and
- (2) revise or change the rates of the City contributions on the basis of these mortality, service and other tables.

(c) **Records.** In addition to other records and accounts, the board shall keep any records and accounts necessary to show at any time:

- (1) the total accumulated contributions of the Members, both individually and collectively;
- (2) the total accumulated contributions of Retired Members, less the total annuity payments made to such retired members; and
- (3) separately the amounts paid into the fund by the City on account of that part of the cost of the System to be borne by the City.

(d) **Annual Report.** The board shall prepare at the close of each fiscal year a financial statement showing the assets and liabilities of the Retirement System and Fund.

Sec. 1160. Budget.

(a) **Transmittal of Budget.** The board shall annually prepare and transmit to the Mayor and Controller a budget setting forth the estimated cost of maintaining the Retirement Fund. The budget shall include separate items as follows:

- (1) **City Contributions.** A sum equal to a percentage of the salaries of all members of the retirement system, which percentage shall be the same as that shown in the last actuarial report rendered, as herein before provided to be the percentage required for members of departments with no past service.
- (2) **Liquidation of Unfunded Liabilities.** A sum sufficient to liquidate, over a period of up to 30 years, any accrued unfunded liabilities assumed by the System.

(3) **Administrative Expenses.** At the discretion of the City Council, the administrative expenses of the System.

(b) **General Obligation of the City.** The obligation to pay benefits of LACERS shall be a general obligation of the City of Los Angeles.

Sec. 1162. Contribution of Members.

(a) **Contribution Required.** Each Member shall contribute to the System by salary deduction at the rate of contribution established by ordinance.

(b) **Member Accounts.** The Board of Administration shall maintain an individual account of the contributions made by or for each Member. Regular interest shall be credited to the individual accounts as of the last day of each month equal to the yield of the five year Treasury Note as determined by the board.

(c) **Payroll Deduction.** Each Member shall be deemed to consent and agree to each deduction made as provided for in this section and the payment of each payroll check to a Member shall be a full and complete discharge and acquittance of all claims and demands whatever for the services rendered by each Member during the period covered by the payroll, except any claims that the Member has to the benefits provided for in this Part 1.

(d) **Refund of Contributions.** The right of each and every Member to be paid his or her accumulated contributions in the event of any subsequent repeal of this Part 1 is hereby declared to be a vested property right of each Member. Furthermore, the right of each and every Member to be paid his or her accumulated contributions upon his or her separation from the City service and the right of each and every beneficiary to be paid the Member's accumulated contributions upon the Member's death before retirement or his or her unused contributions upon the Member's death after retirement are hereby declared to be vested property rights of each Member or Beneficiary.

Sec. 1164. Employment by the City of a Retired Member of the System.

(a) **Prohibition.** No person who shall have been retired from the service and employment of the City pursuant to the provisions of this System shall thereafter be paid for any service rendered as an officer or employee of the City, except for service rendered as an election officer, as an officer elected by the electors of the City, or as a Retired Member of the Board of Administration.

(b) **Exception for Temporary Service.** The Mayor may, at the request of the appointing authority, authorize employment of a Retired Member to a vacant position in a class in which he or she has been employed or, subject to the civil service provisions of the Charter, in any other position, for a period not to exceed 90 days in any fiscal year when such Member's services are required for an emergency or to prevent a stoppage of public business or when his or her special skills are needed to perform work of a limited duration. While so employed, the Retired Member will continue to receive his or her retirement allowance as a Retired Member, but will make no further contribution to the System, and will not be subject to any change in benefits from the System as the result of the employment.

(c) **Exception for Board Fees and Employment as Election Employee.** Notwithstanding any other provision of this section, no Retired Member appointed to a board of commissioners established by the Charter or by ordinance, shall be barred by reason of retirement from receiving the attendance fee provided for the members of the board, nor shall any Retired Member be

barred by reason of retirement from receiving compensation for serving not more than 120 days in any calendar year as a temporary election employee exempted from the classified civil service of the City pursuant to the provisions of Section 1001 of the Charter. No Retired Member receiving compensation described in this subsection shall be considered as an active member of this System for any purpose.

Sec. 1166. Authority to Administer Other Retirement Plans.

(a) **Council Authorization.** The Council may by ordinance adopted in accordance with Section 1168 authorize the Board of Administration to administer retirement plans for employees of the City who are not Members of the LACERS, or as a plan supplemental to any other pension or retirement plan established under the Charter or by ordinance. This plan or supplement shall be separate and distinct from LACERS and not subject to the definitions, conditions of entitlement or requirements applicable to LACERS.

(b) **Fund.** A separate fund administered by the Board of Administration of LACERS shall be created and established for the payment of administration expenses and benefits of any plan enacted under subsection (a). The source of funding for any such plan shall be determined by ordinance except that no assets of the LACERS Fund shall be available for such purpose. To the extent that the board is entrusted with investment responsibilities for such plans, the board shall be responsible for the investment of such funds in accordance with the standards that apply to the LACERS.

Sec. 1168. Establishment of Benefits by Ordinance.

(a) **Procedure for Adoption of Benefits.** Ordinances adopted pursuant to this section must be approved by not less than two-thirds of the Council, subject to the veto of the Mayor and override by Council by three-fourths of Council. No such ordinance may be finally adopted by the Council until the expiration of at least 30 days after its first presentation to the Council, nor until after a public hearing has been held.

(b) **Limitation on Council Authority to Increase or Modify Benefits.** The Council may, by an ordinance adopted pursuant to the requirements contained in subsection (a) modify or add to the benefits set forth in the Administrative Code or change conditions of entitlement. However, the Council may not increase or modify benefits if doing so would violate limitations imposed by federal or state law. As a further condition to the final adoption of benefit modifications, it shall be required that the Council be advised in writing by an enrolled actuary as to the cost of benefit increases.

Any ordinance adopted pursuant to this section shall go into effect upon publication, but the Council may provide that the terms of the ordinance, or portions of it, shall be operative at a later date or dates. Ordinances adopted pursuant to this section shall be codified in the Los Angeles Administrative Code.

An allowance which becomes effective after the publication of an ordinance adopted pursuant to this section but prior to the operative date shall be modified or increased only from and after the operative date of the providing ordinance.

Sec. 1170. Benefits Not Assignable.

The right of every Member and of every Beneficiary to receive and be paid any money under any of the provisions of the LACERS is a right personal to the Member or Beneficiary which cannot be assigned to any other person, in any manner or for any purpose, the intent being that payments shall in all cases be made directly to the Member or Beneficiary.

PART 2
WATER AND POWER EMPLOYEES' RETIREMENT PLAN

Sec. 1180. Applicability of the Plan.

(a) **Water and Power Department Employees and Beneficiaries.** The Water and Power Employees' Retirement Plan (WPERP) created in Section 1102(b) of this Article shall be binding in its entirety upon all employees of the Water and Power Department and all beneficiaries of the Plan. All benefits under the retirement, disability and death benefit features of the Plan shall be granted only upon the terms and conditions set forth in the Plan.

(b) **Intermittent, Occasional and Temporary Employees.** Under no circumstances shall persons employed by the Department of Water and Power to render services of an intermittent or occasional character be eligible for the benefits of the Plan. Any employee, who shall have been excluded from participation in the benefits of the Plan on account of his or her temporary employment status, shall be permitted to participate in the benefits upon the terms and conditions provided by the Plan.

Sec. 1182. Definitions.

For the purpose of this Part 2 concerning the Water and Power Employees' Retirement Plan, the following words and phrases shall have the meaning ascribed to them in this section unless a different meaning is clearly indicated by the context:

(a) **Beneficiary:** A person entitled to receive a benefit from the Plan.

(b) **Member:** An employee of the Department of Water and Power who meets the membership requirements of the Plan as further defined in Plan.

(c) **Plan:** The Water and Power Employees' Retirement Plan adopted by the Board of Administration pursuant to Section 1186.

(d) **Retired Member:** A member who has ceased employment with the Department of Water and Power and is receiving a regular monthly benefit payment from the Plan.

(e) **System:** The Water and Power Employees' Retirement Plan.

Sec. 1184. Retirement from Active Service.

(a) **Normal Retirement.** The normal retirement date for a Member shall be the first day of the calendar month which next follows the Member's 60th birthday. A Member shall be retired from the service of the Department of Water and Power on the

person's normal retirement date or on the first day of any calendar month thereafter, upon his or her written application filed with the Board not less than 30 days prior to the date of retirement.

(b) **Early Retirement.** Any Member may be retired from the service of the Department of Water and Power prior to his or her normal retirement date upon his or her written application if the retirement is recommended by the general manager of the department and approved by the Board of Water and Power Commissioners in accordance with rules and regulations set forth in the Plan.

Sec. 1186. Amendment of Plan and Provision of Health and Welfare Benefits.

The provisions of the Plan may be amended from time to time to provide retirement, disability or death benefits upon the approval of the Board of Water and Power Commissioners and adoption by the Board of Administration. Prior to the adoption of any benefit change, a report from the Plan's actuary must be presented to both the Board of Administration and the Board of Water and Power Commissioners analyzing the cost impact of the proposed changes upon the Plan.

Sec. 1188. Water and Power Employees' Retirement Fund.

(a) **Creation of Fund.** The Water and Power Employees Retirement Fund, the Water and Power Employees Disability Fund, and the Water and Power Employees Death Benefit Fund are created.

(b) **Member Contributions.** All contributions of employees and the Department of Water and Power under the Plan shall be paid into the Water and Power Employees Retirement Fund. The board, as authorized in Section 1110, may segregate revenues, contributions, and expenses of the various benefit programs of the Plan including Retirement, Disability, and Death Benefits.

(c) **General Obligation.** The obligation to pay benefits of WPERP shall be a general obligation of the Department of Water and Power and any of its successors.

Sec. 1190. Actuarial Survey.

The Board of Administration of WPERP shall, at regular intervals not to exceed five years, secure a general survey and actuarial report of the Plan.

PART 3
FIRE AND POLICE PENSION PLANS
GENERAL PROVISIONS

Sec. 1200. Applicability.

Each Tier of Fire and Police Pension Plans shall be governed by the following:

- (a) provisions specific to each Tier as set forth in this Article; and
- (b) these General Provisions for the Fire and Police Pension Plans.

Sec. 1202. Definitions.

For the purposes of the Tiers of the Fire and Police Pension Plans set forth in this Part 3, the following words and phrases shall have the meaning ascribed to them in this section, unless a different meaning is clearly indicated by the context.

- (a) **City:** The City of Los Angeles.
- (b) **Board:** The Board of Fire and Police Pension Commissioners.
- (c) **Plan or System:** The applicable Tier of the Fire and Police Pension Plans.
- (d) **Beneficiary:** Person entitled to receive a benefit from any of the Plans.
- (e) **Department Member:** A person who is a sworn Member of the Fire Department or a sworn Member of the Police Department.
- (f) **Retired Plan Member:** A person who is a former Plan Member whose active duty status has been terminated and is receiving a regular monthly benefit payment from any Tier of the Fire and Police Pension Plans.
- (g) **Tier:** Any one of the several plans administered by the Board within the Fire and Police Pension Plans.
- (h) **Outside Agency:** Any governmental entity other than the Fire or Police Departments of the City of Los Angeles.
- (i) **Transferring Employees:** Employees of an Outside Agency who become Department Members pursuant to a merger or contract for fire or police services authorized by action of the Council.

Sec. 1204. Consolidation of General Manager and Secretary.

The positions of general manager of the Fire and Police Pension Department and of secretary to the Board may be consolidated, in the discretion of the Board.

Sec. 1206. Persons Not Entitled to Fire and Police Pension.

A deputized, reserve or auxiliary police officer or firefighter hired by the City of Los Angeles to perform duties on a part-time basis shall:

- (a) not be a Plan Member or System Member of any Tier for any purpose;
- (b) not be entitled, and the surviving spouse or surviving minor or dependent children or dependent parent(s) shall not be entitled to payment of any benefit or pension provided by the Fire and Police Pension Plans; and
- (c) not have any deductions made for pension purposes from any moneys earned or paid by the City.

Sec. 1208. Repeal of Limitations on Surviving Spouse Benefits.

After December 5, 1996, the survivor benefit of a Qualified Surviving Spouse under any Tier of the Fire and Police Pension

Plan shall not be discontinued due to the subsequent remarriage of a Qualified Surviving Spouse.

Sec. 1210. Budget.

(a) **Adoption of Annual Budget.** The Board of Fire and Police Pension Commissioners shall adopt a budget each year setting forth the administration expense for each Tier of the Fire and Police Pension Plans. The budget shall be adopted at a meeting open to the public. At the discretion of the Council, administrative expense, which includes investment management expense, may be paid from the assets of the applicable Tier.

(b) **Separate Items of Budget.** The Board shall annually prepare and transmit to the Mayor, Council and Controller a budget setting forth the estimated cost of maintaining the Fire and Police Pension Plans. The budget shall include separate items as follows:

- (1) Fire and Police Pension Plan – Tier 1.

(A) A sum equal to that percentage of the salaries of all Tier 1 Members shown in the last actuarial valuation to be required to cover the entry age cost to be paid by the City on account of new entrants into Tier 1. The entry age cost is defined as the level percentage of compensation of new Tier 1 entrants which must be paid into the Fire and Police General Pension Fund – Tier 1 from their date of entry in order to provide the benefits under the Plan, less the contributions to be made by new entrants during the period of their membership as provided in Section 1324.

(B) A sum equal to the dollar amount shown in the last actuarial valuation to be required to amortize the unfunded liabilities of Tier 1. The unfunded liabilities are the present value of all of the assumed obligations of Tier 1, less

(i) the present value of the future contributions to be made by the City under the preceding subsection and by the members under Section 1324, and

(ii) the assets of the Fire and Police Tier 1 Service Pension Fund and of the Fire and Police Tier 1 General Pension Fund.

The amortization period shall be 70 years beginning with the fiscal year 1967-1968.

(C) A sum sufficient to cover the cost, as determined by an actuarial estimate, of benefits granted by the Council under the authority of Section 1330 of Tier 1.

- (2) Fire and Police Pension Plan – Tier 2.

(A) A sum equal to that percentage of the salaries of all Tier 2 Members shown in the last actuarial valuation to be required to cover the entry age cost to be paid by the City on account of new System Member entrants into Tier 2. The entry age cost being defined as the level percentage of salary of Tier 2 entrants which must be paid into the Fire and Police Tier 2 General Pension Fund from their respective dates of entry in order to provide the benefits pursuant to this Plan, less the deductions to be made from the salaries of new

entrants, while they are Tier 2 Members, as provided by Section 1420.

- (B) A sum equal to that percentage of the aggregate salaries of all members of the Fire Department and of the Police Department who are included under the provisions of Tiers 1, 2 and 3 of this Article, as shown in the last actuarial valuation required to amortize the unfunded liabilities of Tier 2, which sum will remain level as a percentage of salary, but which will increase in dollar amount in accordance with the aggregate salary increase assumption. Unfunded liabilities are defined as the present value of all of the assumed obligations of the Plan less:

- (i) the present value of the future contributions to be made by the City pursuant to the preceding subsection (2) (A) ;
- (ii) the present value of the deductions to be made from the salaries of the Tier 2 Members; and
- (iii) the assets of the Fire and Police Tier 2 Service Pension Fund and of the Fire and Police Tier 2 General Pension Fund.

The amortization period shall be 70 years beginning with the fiscal year 1967-68, except the Board shall assume that the unfunded liabilities of Tier 2 shall be \$258,000,000 as of July 1, 1967.

- (C) A sum sufficient to cover the cost as determined by actuarial estimate, of benefits granted by the Council under the authority of Section 1428 of this Tier 2.

(3) Fire and Police Pension Plan – Tier 3.

- (A) A sum equal to that percentage of the salaries of all Tier 3 Members shown in the last actuarial valuation to be required to cover the entry age cost to be paid by the City on account of Tier 3 Member entrants into the Fire and Police Pension Plan – Tier 3. The entry age cost being defined as the level percentage of salary of new Tier 3 Member entrants which must be paid into the fund from their respective dates of entry in order to provide the benefits pursuant to the Tier 3 provisions, less the deductions to be made from the salaries of new entrants while they are Tier 3 Members.

- (B) A sum equal to that percentage of salaries of all Tier 3 Members shown in the last actuarial valuation to be required to amortize the unfunded liabilities of the Fire and Police Pension Plan – Tier 3. The unfunded liabilities being defined as the present value of all the assumed obligations of the Fire and Police Pension Plan – Tier 3 less:

- (i) the present value of the future contributions to be made by the City;
- (ii) the present value of the deductions to be made from the salaries of the Tier 3 Members; and
- (iii) the assets of the funds of the Fire and Police Pension Plan – Tier 3.

- (C) A sum sufficient to cover the cost, as determined by an actuarial estimate, of benefits granted by the City Council by ordinance as authorized by Tier 3.

(4) Fire and Police Pension Plan – Tier 4.

- (A) A sum equal to that percentage of the salaries of all Tier 4 Members shown in the last actuarial valuation to be required to cover the entry age cost to be paid by the City on account of Tier 4 Member entrants into the Fire and Police Pension Plan - Tier 4. The entry age cost is defined as the level percentage of salary of new Tier 4 Member entrants which must be paid into the fund from their respective dates of entry in order to provide the benefits pursuant to the Tier 4 provisions, less the deductions to be made from the salaries of new entrants while they are Tier 4 Members.

- (B) A sum equal to that percentage of salaries of all Tier 4 Members shown in the last actuarial valuation to be required to amortize the unfunded liabilities of the Fire and Police Pension Plan – Tier 4. The unfunded liabilities being defined as the present value of all the assumed obligations of the Fire and Police Pension Plan – Tier 4 less:

- (i) the present value of the future contributions to be made by the City;
- (ii) the present value of the deductions to be made from the salaries of the Tier 4 Members; and
- (iii) the assets of the funds of the Fire and Police Pension Plan – Tier 4.

- (C) A sum sufficient to cover the cost, as determined by an actuarial estimate, of benefits granted by the Council by ordinance as authorized by Tier 4.

(c) **General Obligation of the City.** For the purpose of providing funds to meet the budget of all the Fire and Police Pension Plans, the Council annually shall provide from revenues available to it, funds sufficient to provide the total amount of all items in the budget submitted by the board.

Sec. 1212. Effect of Receipt of Workers' Compensation.

(a) **Definition.** For the purposes of this section, "compensation" is defined as every payment provided for by any general law granting benefits for injury, sickness or death caused by or arising out of employment, and also includes payments made to satisfy any claim for damages to the extent that the payments relieve the obligation to pay compensation under that general law.

(b) **Coordination of Pension Benefits.** If, pursuant to general law, an award of compensation is made or compensation is paid on account of injury, sickness or death caused by or arising out of employment as a Department Member, then the total amount of any disability or survivor pension granted pursuant to any Tier of the Fire and Police Pension Plans shall be reduced by the total amount of the awarded compensation and the amount remaining after reduction shall be the pension granted.

(c) **Payment Procedure.** If the reduction provided in subsection (b) of this section is applicable to a pension:

- (1) **Applied First to Compensation Award.** Any pension payments made under any Tier of the Fire and Police Pension Plans shall be deemed to be, and shall be, payments of the compensation award and shall be first applied as payments of the compensation award. Any pension payments not applied as satisfaction of the compensation award shall be deemed to be, and shall be, applied as payments of the pension granted.

- (2) *Payments Made to the Extent They Exceed Award.* Pension payments shall be made only to the extent that the cumulative sum of the payments of disability or survivor pension provided in any Tier exceed the cumulative sum of the compensation award.
- (3) *Limit on Installment Basis.* Compensation awards may be deducted on an installment basis if no installment is less than 25% of any monthly pension amount payable to the Retired Plan Member.
- (d) **Service Pensions Not Affected.** The reduction provided in subsection (b) of this section shall not apply to any service pension granted under any Tier of the Fire and Police Pension Plans. Nor shall any pension be reduced by any compensation which shall be awarded or paid to any Retired Plan Member receiving a service pension under any Tier of the Fire and Police Pension Plans or to any Plan Member who shall die while eligible to retire. Any deductions made from the salary of any Plan Member and deposited to the credit of any Tier of the Fire and Police Pension Plans shall be applied solely to the cost of service pensions granted under that Tier and never shall cover, directly or indirectly, the cost of any compensation award.

Sec. 1214. Domestic Partner Benefits.

- (a) **Council Authority.** The Council may by ordinance provide survivor benefits for domestic partners of members of Tiers 2, 3 and 4 of the Fire and Police Pension Plans, subject to any conditions of entitlement set forth in any ordinance adopted in accordance with the provisions of this section. The authority granted in this section shall include the authority to expand the definition of “qualified surviving spouse” for purposes of the Fire and Police Pension Plans to include a domestic partner.
- (b) **Mode of Adoption.** Ordinances adopted under this section shall be adopted in the same manner as provided in Section 1618(b), but Council shall be advised in writing by an enrolled actuary as to the cost of the proposed benefits.

Sec. 1216. Pension Benefits in Connection with Mergers and Contracts for Fire and Police Services.

- (a) **Council Authority.** The Council may by ordinance establish pension benefits for persons who leave the employment of an Outside Agency to become Department Members of the Fire or Police Department pursuant to a merger or contract for fire or police services which is authorized by action of the Council. Except as limited in subsection (c), Council shall have broad authority to enact ordinances necessary for the provision and funding of pension benefits for Transferring Employees.

- (b) **Examples of Council Authority.** The broad authority granted to Council includes, but is not limited to:

- (1) *Different Benefits Allowed.* The authority to provide Transferring Employees with benefits other than those provided in the Fire and Police Pension Plans, whether by contracting for coverage with a non-City pension plan, by providing for alternative benefits to be administered by the Board or by other means as the Council shall determine;
- (2) *Transfer of Assets and Liabilities.* The authority to provide for the transfer of pension assets and liabilities in connection with mergers and contracts.

Should it be necessary for the City to assume responsibility for the provision of pension benefits to persons other than the Transferring Employees in order to facilitate a merger or contract, then the Council’s authority shall include the authority to provide benefits to these other persons if the future annual costs attributable to the provision of these benefits is clearly identified in the actuary’s report and any ordinance providing these benefits must prescribe a mechanism for funding the cost of these benefits. The funding mechanism may include, but is not limited to, the transfer of assets from another pension plan and/or reimbursements from the Outside Agency.

- (c) **Limitation Upon Council Authority.** The authority given to the Council to establish pension benefits herein is specifically limited as follows:

- (1) *No City Service Credit.* The Council may not provide service credit to a Transferring Employee for service performed prior to becoming a Department Member if the Transferring Employee is receiving or will be entitled in the future to receive pension benefits from another pension plan based upon prior service.
- (2) *Funding of Costs of Service Credit Granted.* Any ordinance adopted pursuant to this section which provides for a Transferring Employee to receive service credit for prior service must prescribe a mechanism for funding the costs attributable to this prior service which may include, but is not limited to, the transfer of assets from another pension plan and/or reimbursements of costs from the Outside Agency.

- (d) **Mode of Adoption.** Ordinances adopted under this section shall be adopted in the same manner as provided in Section 1618(b), but Council shall be advised in writing by an enrolled actuary as to the cost of the proposed benefits.

FIRE AND POLICE PENSION PLANS - TIER 1
(formerly Article XVII)

Sec. 1300. Tier 1 Members.

A Plan Member hired on or before January 28, 1967, shall be a Fire and Police Pension Plan – Tier 1 Member.

Sec. 1302. Definitions.

In addition to the words and phrases defined in the Fire and Police Pension Plans General Provisions in Part 3 and for the purposes of this Tier 1, the following words and phrases shall have the meaning ascribed to them in this section, unless a different meaning is clearly indicated by the context.

(a) **Member of Fire or Police Department.** A "Member of the Fire Department" shall consist of all persons duly and regularly appointed in the Fire Department under civil service rules and regulations to perform the duties of a regular firefighter in the City of Los Angeles, under whatever designation they may be described in any salary or departmental ordinance providing compensation for the Fire Department; and a "Member of the Police Department" shall consist of all members of the Police Department appointed under civil service rules and regulations and sworn in, as provided by law, to perform the duties of a regular police officer of the City of Los Angeles, under whatever designation that they may be described in any salary or departmental ordinance providing compensation for the members of the Police Department. The provisions of Tier 1 shall apply to all members of the Fire and Police Departments as defined in this Tier 1, and to all members of these departments who have been granted pensions pursuant to this Tier 1.

(b) **Eligible Widow.** An "eligible widow" means the widow of a deceased member of the Fire Department or the Police Department who, as such, is entitled to a pension.

On or before December 5, 1996 any eligible widow, who remarried and thereby ceased to be an eligible widow, shall be reinstated as an eligible widow as of the latest of:

- (1) the date upon which a judgment or decree did or shall become final dissolving the marriage upon any ground or declaring a void or voidable marriage to have been null and void or voided, if the date was or shall be within 5 years from the date of the marriage ceremony;
- (2) the date upon which the marriage was or shall be dissolved by the death of the other party if the date was or shall be within 5 years from the date of the marriage ceremony; or
- (3) the date upon which this section shall become effective, but if either of the events mentioned in (1) or (2) had occurred prior thereto, it had occurred within 5 years from the date of the marriage ceremony.

A reinstated eligible widow shall be entitled to the reinstatement of her pension effective as of the latest of such dates, whichever shall be applicable, but shall not be entitled to the payment of any pension for the period prior to such applicable date and subsequent to the date of the marriage ceremony. The pension paid to any other person during or for the period of the marriage or purported marriage of such reinstated eligible widow or during or for any period after the dissolution thereof shall cease when her pension shall be reinstated. However, should such reinstated eligible widow thereafter be a party to another marriage ceremony her pension as such shall cease and never again shall be reinstated regardless of whether such marriage ceremony shall

result in a valid marriage or in a voidable or void marriage and whether or not the same legally shall be terminated. The pension which shall become payable to any reinstated eligible widow shall commence in the same monthly amount which then would have been payable if she never had ceased to be an eligible widow and thereafter it shall be adjusted as otherwise provided in Section 1328 relating to Cost of Living Adjustments.

The provisions of Sections 1314 and 1316 relating to Service and Nonservice Connected Survivor Pensions hereafter shall be construed and applied in accordance with the provisions of this subsection.

(c) **Dependent Child.** A "dependent child" means a person, but not including a person who is an illegitimate child of a deceased member of the Fire Department or the Police Department who had not been legitimated by such member, who is a legitimate child, a legitimated child or an adopted child of such member, and who had not been adopted by a person of the same gender as such member prior to the date of his death, who is not married and who, while under the age of 21 years, had become disabled, either prior or subsequent to the date of death of such member, from earning a livelihood for any cause or reason whatsoever, other than by reason of his own moral turpitude or as a result thereof. Such person shall be a dependent child only until he:

- (1) shall be adopted by a person of the same gender as such member or shall marry, whichever shall be the earlier, regardless of his age at the time of the occurrence of either such event and whether or not he then is disabled from earning a livelihood;
- (2) shall attain the age of 18 years if neither of the events mentioned in (1) had occurred prior thereto and if, at that time, he is not disabled from earning a livelihood; or
- (3) shall cease to be disabled from earning a livelihood if none of the events mentioned in (1) or (2) had occurred prior thereto.

The Board shall have the power to determine whether or not a child of a deceased member is a Dependent Child and to determine, from time to time, the fact of whether or not a child who had been determined by it to be a Dependent Child continues to be a Dependent Child.

The provisions of Section 1314 and 1316 relating to Service and Nonservice Connected Survivor Pensions hereafter shall be construed and applied in accordance with the provisions of this subsection.

(d) **Assignment Pay.** "Assignment Pay" means any additional gross monthly pay or 1/12 of any additional gross annual pay which, by reason of assignment to perform special duties or hazardous duties, in a higher class, position, grade, code or other title than the lowest thereof within the member's rank, shall be provided therefor by ordinance, upon the conditions therein set forth, as of the date of the termination of such member's status as a member of the Fire Department or the Police Department.

Any such assignment pay shall not be considered as "the highest salary (exclusive of any amount payable by reason of assignment to special duty) attached to the rank of policeman or fireman" for the purposes of either Section 1312 or Section 1316 relating to Nonservice Connected Disability and Survivor

Pensions. Any such assignment pay hereafter shall be included in “the average monthly rate of salary assigned to the ranks or positions held by such member” in the case of a member who shall retire upon a service pension or in the case of a member who shall die while eligible for a service pension if he had received the same immediately preceding the date of his retirement or death or upon the last day he had performed duties as a member of the Fire Department or the Police Department or, if he had not received the same at either such time but had received such pay at some time prior thereto, 10% of the assignment pay which he had received at the time of the termination of his last assignment to such duties for each year in the aggregate of his assignment to such duties not exceeding, however, 10 years in the aggregate.

The provisions of Section 1304 relating to Service Pensions, Section 1306 (a)(4)(M) relating to Return or Recall to Active Duty, and Section 1314 relating to Service Connected Survivor Pensions hereafter shall be construed and applied in accordance with the provisions of this subsection.

(e) **Partial Year of Service.** “Partial Year of Service” means any period of less than 12 months for which the member, if it had been a complete year, would have been entitled to credit toward retirement.

In the case of any member who had become such on or subsequent to January 17, 1927, any such partial year of service shall be calculated from the end of the member’s last completed year of service to the end of the payroll period immediately prior to the date of his retirement and shall be counted as part of his years of service for his retirement upon a service pension hereafter granted or for a pension hereafter granted to his widow, minor child or children, dependent child or children or dependent parent or parents if he hereafter shall die while eligible for a service pension prior to having served 25 years in the aggregate.

Any such partial year of service, in case of a member who shall have had less than 25 years of service, shall be credited in the same ratio of 2% of the average monthly rate of salary assigned to the ranks or positions held by him immediately preceding the date of his retirement or death as such partial year shall bear to a complete year and, in the case of a member who shall have had 25 years of service or more, shall be credited in the same ratio 1 2/3% of such average rate of salary as such partial year shall bear to a complete year.

The provisions of Section 1304 relating to Service Pensions, Section 1306 (a)(4)(M) relating to Return or Recall to Duty, and Section 1314 relating to Service Connected Survivor Pensions hereafter shall be construed and applied in accordance with the provisions of this section.

Sec. 1304. Service Pension.

Any member of the Fire or Police Department who shall have served in such department for 20 years or more in the aggregate in any capacity or rank whatever, on his request, or by order of the Board, if it be deemed for the good of the department, shall be retired from further service in such department, and such member shall thereafter, during his lifetime, be paid in equal monthly installments a pension as follows:

(a) **Twenty Years Service:** For 20 years aggregate service, 40% of the average monthly rate of salary assigned to the ranks or positions held by the member during the three years immediately preceding the date of his retirement;

(b) **Twenty up to Twenty-Five Years Service:** And an additional 2% of the average rate of salary for each year over 20 and less than 25 years in the aggregate served by the member before retirement;

(c) **Twenty-Five Years Service:** For 25 years aggregate service, 50% of the average monthly rate of salary assigned to the ranks or positions held by the member during the three years immediately preceding the date of his retirement;

(d) **Twenty-Five up to Thirty-Five Years Service:** And an additional 1 2/3% of the average rate of salary for each year over 25 and less than 35 years in the aggregate served by the member before retirement;

(e) **Thirty-Five or More Years Service:** For 35 years or more aggregate service, two-thirds of the average monthly rate of salary assigned to the ranks or positions held by the member during the three years immediately preceding the date of his retirement.

(f) **Hires Prior to January 17, 1927 with Thirty Years Service:** Any member of the Fire or Police Department who shall have become a member of such department prior to January 17, 1927, who shall have served in such department for 30 years in the aggregate in any capacity or rank whatever, shall, on his request, or by order of the Board, if it be deemed for the good of the department, be retired from further service in such department, and he shall thereafter, during his lifetime, be paid in equal monthly installments a pension equal to two-thirds of the average monthly rate of salary assigned to the ranks or positions held by such member during the three years immediately preceding the date of his retirement.

(g) **Hires Prior to January 17, 1927 with Twenty Years Service:** After 20 years aggregate service, on request of a member who shall have become a member of such department prior to January 17, 1927, or by the Board for the good of the department, such member shall be retired and paid in equal monthly installments a limited pension as follows:

(1) **Twenty Years Service.** For 20 years aggregate service, 50% of the average monthly rate of salary assigned to the ranks or positions held by the member during the three years immediately preceding the date of his retirement;

(2) **Twenty up to Thirty Years Service.** An additional 1 2/3% of the average rate of salary for each year over 20 years and less than 30 years in the aggregate served by the member before retirement.

In computing the aggregate period of service of a member of the Fire or Police Department for the purposes of this section, there shall be included the period or periods of time, if any, while the member was on disability retirement pursuant to the provisions of Sections 1310 or 1312 relating to Service and Nonservice Connected Disability Pensions of this Charter.

The provisions of this section are subject to the further conditions set forth in Section 1308 relating to the Maximum Tier 1 Pensions of this Charter.

Sec. 1306. Return or Recall to Active Duty.

(a) **Return to Active Duty.**

(1) **Conditions for Return to Active Duty.** A retired member, whenever retired, may file, with the Chief of the department from which he retired, a written application to be returned to active duty therein only upon the conditions:

- (A) *Service Retirement and Former Rank.* That his original retirement had been pursuant to Section 1304 relating to Service Pensions and had been from the Fire Department while holding a rank no higher than Engineer or from the Police Department while holding a rank no higher than Sergeant; and
 - (B) *Time Since Original Retirement and Age.* That, as of the filing date of the application, the period of his original retirement had been no longer than three years and he shall be under the age of 55 years; and
 - (C) *Medical Exam.* That he satisfactorily had passed a medical examination not more than 30 days prior to the effective date of his original retirement, but the Chief, if the effective date thereof had been prior to May 2, 1969, may waive the condition contained in this subsection.
- (2) *Subsequent Conditions for Return to Active Duty.* The Chief may approve any application only upon the conditions that, after the filing date thereof, the retired member:
- (A) *Medical Exam.* Had passed a medical examination from which it had been determined that he would be capable of performing the duties which would be assigned to him if he were to be returned to active duty, if the determination had been approved or concurred in by the Board; and
 - (B) *Certification.* Had certified, in writing, that he had read and understands the provisions of this section and Section 1404 relating to Requests of Reactivated Members of Tier 1 to Become Tier 2 System Member.
- (3) *Return to Rank at Original Retirement.* The Chief, if he were to approve the application, may return the retired member to active duty only in or to a vacant position in the rank held by him at the effective date of his original retirement.
- (4) *Status of a Reactivated Member of Tier 1.* A retired member, if he were to be returned to active duty, thereafter shall be known as a “reactivated member” and, as such:
- (A) *Privilege, Not An Appointment.* His return to active duty shall be a privilege only and not an appointment as a Department Member as provided by Section 1400 relating to Plan Members for the purposes of Tier 2, he shall be on probation for one year from and after the effective date thereof regardless of any other provision of law contained in the Charter or otherwise, and the Chief may terminate his service at any time during such year;
 - (B) *Original Pension Terminated.* His pension, granted by reason of his original retirement, shall be terminated by the Board as of the effective date of his return to active duty;
 - (C) *Method of Calculating Years of Service.* His service after the effective date of his return to active duty, for the purposes of this Tier 1 and regardless of any other provision of law contained in the Charter or otherwise, shall consist of only
 - (i) the days for which he shall be paid for performing his assigned duties;
 - (ii) his days of vacation with pay; and
 - (iii) his regular days off duty with pay, and one year of such service shall consist of a total of 365 such days;
- (D) *Years of Service for Purposes of Civil Service and Related Purposes.* His aggregate years of service, for the purposes of his eligibility to advancement in accordance with civil service rules and regulations and the payment of his salary and longevity pay or merit pay, shall consist of only his years of service prior to the effective date of his original retirement and his service after the effective date of his return to active duty;
- (E) *Years of Service for Purposes of Tier 1.* His aggregate years of service, for the purposes of this Tier 1 and regardless of any other provision of law contained in the Charter or otherwise, shall consist of only his years of service prior to the effective date of his original retirement and his service subsequent to the effective date of his return to active duty. Such service shall be for not less than one year as defined in subsection (a)(4)(C) of this section;
- (F) *Salary, Longevity, & Merit Pay.* He shall be assumed to have a satisfactory standard of service and shall be paid the salary provided for his rank and the longevity pay or merit pay provided for his aggregate years of service as defined in subsection (a)(4)(E) of this section, subject, however, to all provisions applicable to the termination of payment of longevity pay or merit pay;
- (G) *Payroll Deduction.* He shall have deductions made for pension purposes, pursuant to Section 1324 relating to Member Contributions – Tier 1, from his salary and longevity pay or merit pay;
- (H) *Prohibition of Nonservice Connected Pensions.* He never shall be entitled to a subsequent retirement pursuant to Section 1312 relating to Nonservice Connected Disability Pensions and his widow, his minor child or children (hereafter referred to in this subsection as “his child”) or his dependent parent or parents (hereafter referred to in this subsection as “his parent”) never shall be granted a pension pursuant to Section 1316 relating to Nonservice Connected Survivor Pensions;
- (I) *Allowance of Service Connected Pensions.* He shall be entitled to a subsequent retirement pursuant to Section 1310 relating to Service Connected Disability Pensions if he were to become eligible therefor and upon his death, if he theretofore had had such a subsequent retirement, a pension shall be granted pursuant to applicable provisions of Section 1314 relating to Service Connected Survivor Pensions to his widow, (if she shall have been married to him for at least one year prior to the effective date of his original retirement or for at least one year after the effective date of his return to active duty and prior to the effective date of his subsequent retirement), or to his child or to his parent;

- (J) *Allowance of Service Related Survivor Pension.* His widow or his child or his parent, if he were to die while a reactivated member from any cause arising out of or from the performance of his duties, shall be granted a pension pursuant to applicable provisions of Section 1314 relating to Service Connected Survivor Pensions;
- (K) *Allowance of Survivor Pension Upon Death of Reactivated Member.* His widow, (if she shall have been married to him for at least one year prior to the effective date of his original retirement or for at least one year after the effective date of his return to active duty and prior to the date of his death), or his child or his parent, if he were to die while a reactivated member from any cause other than a cause arising out of or from the performance of his duties, shall be granted the same pension she would have received pursuant to applicable provisions of Section 1314 relating to Service Connected Survivor Pensions;
- (L) *Reinstatement of Original Pension.* His pension, granted by reason of his original retirement, if his service were to be terminated during the one year from and after the effective date of his return to active duty for any reason other than by reason of his subsequent retirement pursuant to Section 1310 relating to Service Connected Disability Pensions, shall be reinstated by the Board, as of the effective date of the termination of his service, at the amount of pension which then would have been payable to him if he had not returned to active duty and, upon his death, the pension which shall be granted pursuant to Section 1314 relating to Service Connected Survivor Pensions to his widow (if she shall have been married to him for at least one year prior to the effective date of his original retirement), or to his child or to his parent, shall be calculated upon the salary upon which his pension had been calculated as of the effective date of his original retirement; and
- (M) *Retirement as Reactivated Member.* He shall be entitled to a subsequent retirement pursuant to Section 1304 relating to Service Pensions, based upon his aggregate years of service as defined in subsection (a)(4)(E) and his pension shall be calculated upon a sum equal to the salary upon which his pension had been calculated as of the effective date of his original retirement (hereinafter referred to as "such salary"), plus a percentage of the difference between such salary and his salary as of the effective date of his subsequent retirement, for his years of service subsequent to the effective date of his return to active duty as defined in subsection (a)(4)(C), so that such sum shall be:
- (i) such salary plus 20% of such difference for one such year,
 - (ii) such salary plus 40% of such difference for two such years,
 - (iii) such salary plus 60% of such difference for three such years,
 - (iv) such salary plus 80% of such difference for four such years and
 - (v) such salary plus 100% of such difference for five or more such years or the equivalent of his salary as of the effective date of his subsequent retirement and upon his death, if he previously had had such a subsequent retirement,
- the pension which shall be granted pursuant to Section 1314 relating to Service Connected Survivor Pensions to his widow, (if she shall have been married to him for at least one year prior to the effective date of his original retirement or for at least one year after the effective date of his return to active duty and prior to the effective date of his subsequent retirement), or to his child or to his parent, shall be calculated upon the sum upon which his pension had been calculated as of the effective date of his subsequent retirement.
- (5) *Applicability of Tiers 1 & 2 to Reactivated Members.* The provisions of this Tier 1 and of Section 1400 of Tier 2 hereafter shall be construed and applied, as to a reactivated member, his widow, his child and his parent, in accordance with respectively applicable provisions of subsection (a)(4) of this section.
- (b) **Recall to Active Duty.**
- (1) *Rules for Recall to Active Duty.* The Chief shall promulgate rules and set standards as he may deem to be necessary or desirable with respect to recalling a retired member to active duty.
- (2) *Conditions for Recall to Active Duty.* A retired member, whenever retired, shall be eligible to be recalled to active duty in the department from which he retired only upon the conditions:
- (A) *Service Retirement and Former Rank.* That his original retirement has been pursuant to Section 1304 relating to Service Pensions and had been from the Fire Department while holding a rank lower than Fire Chief or from the Police Department while holding a rank lower than Chief of Police;
 - (B) *Certification.* That he had certified, in writing, that he had read and understands the provisions of this section; and
 - (C) *Consent to Recall.* That he voluntarily had consented to be recalled to active duty.
- (3) *Limitations on Recall.* The Chief may recall a retired member to active duty:
- (A) *Rank at Retirement.* Only in or to a vacant position in the rank held by him at the effective date of his original retirement;
 - (B) *90 day Limit.* For not to exceed 90 days in any one calendar year; and
 - (C) *Status Defined in this Section.* The salary, benefits and other terms and conditions of employment of any recalled member shall be as provided under subsections (b)(5) and (b)(6) of this section.
- (4) *No Recall of Police Exceeding 12 Months Without Loss of Pension.* Recall of retired members of the Police Department may be approved for a period in excess of 90 days but not for more than 12 consecutive months, without loss of pension, in which case the salary, benefits and other

terms and conditions of employment for recalled police officers shall be established by ordinance.

(5) *Status of Recalled Member.* A retired member, if he were to be recalled to active duty, thereafter shall be known as a "recalled member" and, as such:

(A) *Privilege Only.* His recall to active duty shall be a privilege only and the Chief may terminate his service at any time;

(B) *Existing Pension Continues.* His pension shall be paid during the period of his recall to active duty;

(C) *Salary Amount.* He shall be paid the salary provided for his rank and the longevity pay or merit pay provided for his aggregate years of service prior to the effective date of his original retirement;

(D) *No Contributions Deducted.* He shall have no deductions made for pension purposes, pursuant to Section 1324 relating to Member Contributions – Tier 1, from his salary and longevity pay or merit pay; and

(E) *No Survivor Pension for Recalled Service.* He, his widow, his minor child or children or his dependent parent or parents never shall be entitled to any pension benefits provided by Tier 1 or Tier 2 by reason of his service as a recalled member.

(6) *Tier 1 Construed with Recalled Members Rules.* The provisions of this Tier 1 hereafter shall be construed and applied, as to a recalled member, his widow, his minor child or children and his dependent parent or parents, in accordance with applicable provisions of subsection (b)(5) of this section.

Sec. 1308. Maximum Tier 1 Pension.

The limitations of the amount of maximum pension payable pursuant to Section 1304 relating to Service Pensions of Tier 1 shall apply uniformly to all members of the Fire and Police Departments.

Sec. 1310. Disability Pension – Service Connected.

(a) **Service Connected Disability Pension.** Whenever any member of the Fire or Police Department shall become so physically or mentally disabled by reason of bodily injuries received in, or by reason of sickness caused by the discharge of his duties in such department as to necessitate his retirement from active service, the Board shall order and direct that the member be retired from further service in such department; and thereafter the member so retired shall, during his lifetime, be paid a pension in an amount to be determined by the Board. The pension shall be equal to not less than 50%, nor more than 90%, of the salary attached to the rank or position held by him in such department at the date of the retirement order. The pension shall be paid in equal monthly installments.

(b) **Termination of Disability Pension.** Any pension granted to any member of the Fire or Police Department for disability or sickness, as provided for in this section, shall cease when the disability or sickness ceases and such member shall, subject to civil service and other provisions of the Charter governing the appointment of City employees, have been restored to active duty in such department of which such person was a member at the time of disability retirement to the same rank or position he previously held.

(c) **Board Investigation and Findings.** The Board of Pension Commissioners shall have the power to hear and determine all matters pertaining to the granting and termination of any pension award as provided for in this section. The Board shall make its findings in writing, based upon the report of at least three regularly licensed, practicing physicians, and such other evidence concerning the disability as it may have before it. The Board shall determine the degree of disability and the determination shall govern the amount of pension to be awarded to the disabled member.

(d) **Petition for Reconsideration.** Upon the written request of any such retired member, or upon its own motion, the Board shall have the power, at any time prior to the restoration of the retired member to active service, to consider new evidence pertaining to the case of the retired member and to increase or decrease the amount of pension award to be thereafter paid.

Sec. 1312. Disability Pension – Nonservice Connected.

(a) **Nonservice Connected Disability Pension.** Any member of the Fire or Police Department who shall have served in such department for five years or more in the aggregate from the date of his last appointment to such department and who has become physically or mentally incapacitated by reason of injuries or sickness other than injuries received or sickness caused by the discharge of his duties in such department, and who is incapable as a result thereof from performing his duties, shall be retired upon written application of such person or of any person acting in his behalf or of the head of the department in which the member is employed.

(b) **Board Investigation and Pension Amount.** The Board shall cause the member to be examined by and a written report thereon rendered by three regularly licensed, practicing physicians selected by the Board, and shall hear such other evidence relating to such disability of such member as may be presented to the Board. If, upon considering the report of such physicians and such other evidence as shall have been presented to it, the Board finds that the member has become physically or mentally incapacitated by reason of the injuries or sickness other than injuries received or sickness caused by the discharge of the duties of the member in such department, and he is incapable as a result thereof of performing his duties, and if the Board finds that such disability was not due to or caused by the moral turpitude of the member, he shall be retired from further service in such department, and thereafter the member so retired shall, during his lifetime, be paid a pension in an amount equal to 40% of the highest salary (exclusive of any amount payable by reason of assignment to special duty) attached to the rank of policeman or fireman at the date of the retirement order. The pension shall be paid in equal monthly installments.

(c) **Termination of Disability Pension.** Any pension granted to any member of the Fire or Police Department for disability or sickness as provided in this section shall cease when the disability or sickness ceases, and such member shall, subject to civil service and other provisions of the Charter governing the appointment of City employees, have been restored to active duty in such department of which such person was a member at the time of disability retirement to the same rank or position he previously held. The Board of Pension Commissioners shall have the power to hear and determine all matters pertaining to the granting and termination of any pension award as provided for in this section.

(d) **Applicability of Section.** This section shall be applicable only where a member is not entitled to a disability pension under the provisions of Section 1310 relating to Service Connected Disability Pensions.

Sec. 1314. Survivor Pension – Service Connected Member’s Death.

(a) **Service Connected Survivor Pension.** Whenever any member of the Fire or Police Department shall die as a result of any injury received during the performance of his duty, or from sickness caused by the discharge of such duty, or after retirement, or while eligible to retire from such department on account of years of service, then an annual pension shall be paid in equal monthly installments to his widow, or child or children, or dependent parent or parents, in an amount equal to one-half of the average monthly rate of salary assigned to the ranks or positions held by such member during the three years immediately preceding the time of his death or the date of his retirement from active duty in such department.

(b) **Persons Entitled to Pension.** The pension described in subsection (a) shall be paid to the widow during her lifetime, and thereafter the same pension amount shall be paid in equal monthly installments, to the legally appointed guardian of the child or children of such deceased member until such child or children shall have attained the age of 18 years, or to his child or children should there be no widow until such child or children shall have attained the age of 18 years, or to his dependent parent or parents during their lifetime or during such dependence, should there be no widow or child.

(c) **Additional Amounts for Children.** During the lifetime of such widow an additional amount shall be paid to such widow for each child during the lifetime of such child, or until such child shall have married or reached the age of 18 years, as follows:

- (1) For one child: twenty-five percent (25%) of the pension in subsection (a);
- (2) For two children: forty percent (40%) of such pension; and
- (3) For three or more children: fifty percent (50%) of such pension.

(d) **Pension Entitlement or Termination.** No widow of a pensioner shall be entitled to a pension unless she shall have been married to such deceased pensioner at least one year prior to the date of his retirement. No widow of a member of the Fire or Police Department eligible for retirement from such department, who dies from causes other than those arising out of or from the performance of his duties, shall be entitled to a pension unless she shall have been married to such deceased member for at least one year prior to the date of his death. If such child or children shall marry, then the pension paid to the person so marrying shall cease. Should the dependency of such parent or parents terminate, then the pension paid to such dependent parent or parents shall cease.

(e) **Limitation on Certain Pensions.** The pension payable hereunder to the widow, child or children or dependent parent or parents of a member of the Fire or Police Department who became a member of such department on or after January 17, 1927, who, after retirement on account of years of service, but having served less than 25 years in the aggregate prior to the time of such retirement, or who, while eligible to retire from such department on account of years of service, but prior to having served 25 years in the aggregate shall die from causes other than

those arising out of or from the performance of his duties, shall not exceed the amount of the pension which such retired member was receiving at the time of his death or which such member eligible for retirement would have been eligible to receive at the date of his death under the provisions of Sections 1304 relating to Service Pensions and 1308 relating to Maximum Tier 1 Pensions of this Charter, and the additional amount payable to such widow on account of children pursuant to the provisions of this section shall be the applicable percentage hereinabove set forth of a pension in such maximum amount.

Sec. 1316. Survivor Pension – Nonservice Connected Member’s Death.

(a) **Nonservice Connected Survivor Pension.** Whenever any member of the Fire or Police Department (other than a member retired on account of years of service or a member eligible to retire on account of years of service, but including a member retired on account of disability pursuant to the provisions of Section 1312 of this Tier 1) who shall have served in such department for five years or more in the aggregate from the date of his last appointment to such department, shall die from causes other than those arising out of or from the performance of his duties, then an annual pension shall be paid in equal monthly installments to his widow, or child or children, or dependent parent or parents, in an amount equal to 40% of the highest salary (exclusive of any amount payable by reason of assignment to special duty) attached to the rank of police officer or fire fighter at the date of such member’s death.

(b) **Persons Entitled to Pension.** The pension described in subsection (a) shall be paid to the widow during her lifetime and thereafter a pension in the same amount shall be paid in equal monthly installments to the legally appointed guardian of the child or children of such deceased member until such child or children shall have attained the age of 18 years, or to his child or children should there be no widow until such child or children shall have attained the age of 18 years, or to his dependent parent or parents during their lifetime or during such dependence, should there be no widow or child. During the lifetime of such widow an additional amount shall be paid to such widow for each child during the lifetime of such child, or until such child shall have married or reached the age of 18 years, as follows:

- (1) For one child: 25% of the pension allowed in subsection (a);
- (2) For two children: 40% of such pension; and
- (3) For three or more children: 50% of such pension.

(c) **Limitation on Widow Pensions.** No widow shall be entitled to a pension pursuant to the provisions of this section unless she shall have been married to such deceased member for at least one year prior to the date of his death. No widow of a member who shall die while on disability retirement pursuant to the provisions of Section 1312 relating to Nonservice Connected Disability Pensions of the Charter shall be entitled to a pension pursuant to the provisions of this section unless she shall have been married to such deceased member for at least one year prior to the date of his retirement.

Sec. 1318. Election of Pension.

(a) **Election.** Upon the death of a retired member retired pursuant to Section 1312 relating to Nonservice Connected Disability Pensions, any person entitled to a pension pursuant to

Section 1316 relating to Nonservice Connected Survivor Pensions must make and file with the Board a written election to have the amount thereof calculated either upon the salary specified in Section 1316 relating to Nonservice Connected Survivor Pensions or upon the salary specified in Section 1312 relating to Nonservice Connected Disability Pensions and the Board shall grant the pension in accordance therewith.

(b) **Election for Incompetent Person or Minor Child.** Any such election, on behalf of any incompetent person or on behalf of a minor child of such member, must be made by the guardian of his estate and shall be either authorized or approved by a court order, a certified copy of which shall be filed with the Board. Section 1316 relating to Nonservice Connected Survivor Pensions hereafter shall be construed and applied in accordance with this section.

Sec. 1320. Tier 1 Pension Funds.

(a) **Creation of Funds.** Two entirely separate and distinct funds hereby are created and established for the payment of pension benefits pursuant to this Tier 1 and certain other benefits as may be authorized from time to time pursuant to the enabling provisions of Section 1330 of Tier 1, one of which shall be known as the "Fire and Police Tier 1 Service Pension Fund" and the other of which shall be known as the "Fire and Police Tier 1 General Pension Fund."

(b) **Fire and Police Tier 1 Service Pension Fund.** The Fire and Police Tier 1 Service Pension Fund shall consist of:

- (1) contributions made, pursuant to Section 1324 concerning Member Contributions, from the salaries of members of the Fire Department and of the Police Department; and
- (2) all interest, earnings and profits resulting from investments of such moneys.

(c) **Fire and Police Tier 1 General Pension Fund.** The Fire and Police Tier 1 General Pension Fund shall consist of:

- (1) all moneys appropriated to the fund by the Council;
- (2) all interest, earnings and profits resulting from investments of fund moneys; and
- (3) all moneys transferred from the Fire and Police Tier 2 General Pension Fund created and established by Tier 2 of this Article.

(d) **Use of Funds.** The moneys in the Fire and Police Tier 1 Service Pension Fund shall be used, other than for the investment thereof, exclusively for the payment of service pensions granted pursuant to Section 1304 concerning Service Pensions. The moneys in the Fire and Police Tier 1 General Pension Fund shall be used, other than for the investment thereof and except as provided in subsection (e), exclusively for the payment of all pensions other than service pensions and such other benefits as may be provided by ordinance adopted pursuant to the provisions of Section 1330 of this Tier 1.

(e) **Transfer to Service Pension Fund.** In the event that the moneys in the Fire and Police Tier 1 Service Pension Fund should be insufficient, at any time, to pay all service pensions, then the Board shall have the power and authority to cause the Controller of the City to transfer to the fund sufficient moneys therefor from the Fire and Police Tier 1 General Pension Fund. In no other event shall any of the moneys in either of these funds be commingled with any of the moneys in the other of these funds, whether as moneys or cash on deposit or as moneys invested.

Sec. 1322. Actuarial Standards.

(a) **Reserve Basis of System.** The Fire and Police Pension Plan – Tier 1 shall be maintained on a reserve basis which, for the purposes of this Tier 1 shall mean one which provides for the accumulation and maintenance of the Fire and Police Tier 1 Service Pension Fund and the Fire and Police Tier 2 General Pension Fund which together will at all times be equal to the difference between the present value of the obligations assumed and the present value of the moneys to be received for paying such obligations, where such present values are estimated in accordance with accepted actuarial methods and on the basis of an assumed rate of interest and the mathematical probabilities of the occurrence of such contingencies as affect both the payment of the assumed obligations and the receipt of moneys with which they are to be paid in accordance with the provisions of Sections 1210(b)(1) concerning Fire and Police Pension Plans Budget and 1324 concerning Member Contributions. The Board shall retain a competent consulting actuary for the purpose of making the necessary actuarial studies and reports on the required investigations and valuations.

(b) **Actuarial Investigation and Valuation.** The Board shall secure an actuarial valuation showing the cost of maintaining the system and funds on such reserve basis and, at intervals of not to exceed five years, shall cause to be made an actuarial investigation including, but not limited to, the mortality, service and salary experience of the members and beneficiaries and shall further cause to be made annually an actuarial valuation of the assets and liabilities of the funds.

(c) **Assumed Rate of Interest.** The Board, from time to time and with the advice of the investment counsel, shall establish an assumed rate of interest as in its judgment seems proper in the light of the experience and prospective earnings on the investments of the funds.

(d) **Unrealized Profits and Losses.** With the advice of the consulting actuary and of the investment counsel, the Board, for the purpose of the actuarial valuations, shall provide by rule for the manner and to the extent to which any unrealized profits or losses in the equity-type investments of the funds shall be taken into consideration.

Sec. 1324. Member Contributions – Tier 1.

(a) **Required Contributions.** Each member of the Fire Department and of the Police Department included within the pension provisions of this Tier 1 shall contribute to the Fire and Police Tier 1 Service Pension Fund in the manner provided in this section, except that further contributions to the Fund shall not be required from an employee who has served as a member of the Fire Department or of the Police Department for more than 30 years.

(b) **Payroll Deduction.** The administrative head of each such department shall cause to be shown on each and every payroll of the department a deduction of six percent (6%) of the amount of salary, as shown on each such payroll, of each such member whose name appears thereon, and shall certify to the Controller on each such payroll the amount to be deducted from the compensation of each such member whose name appears thereon, and shall cause to be drawn a payroll check in favor of the "Board of Fire and Police Pension Commissioners" for the total amount of deduction shown on each payroll of such department, and the Board shall deposit the payroll check to the credit of the Fire and

Police Tier 1 Service Pension Fund. It shall be the duty of the administrative head of each department to cause to be furnished a copy of each and every payroll to the Board.

(c) **Deemed Consent to Deduction.** Each member shall be deemed to consent and agree to each deduction made as provided for herein and the payment of each payroll check to such member shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by each member during the period covered by such payroll, except such claims as a member has to the benefits or payments provided for in this Tier 1.

(d) **Maintenance of Individual Accounts.** Starting July 1, 1982, the Board shall maintain an individual account of the contributions by each member, as hereinabove provided. Regular interest shall be credited to such individual accounts as of the last day of June and December of each year after July 1, 1982, at such rate as the Board may deem proper in light of the earnings of the funds of the Fire and Police Pension Plan – Tier 1, exclusive of profits and losses on principal resulting from sales of securities. No such interest shall be credited at any other time, except such interest shall be credited to the individual account of a member whose employment is terminated for any reason for any period of service between the next preceding last day of June or December and the end of the pay period preceding the date of such termination at the rate at which regular interest was last credited to members' individual accounts.

(e) **Refund of Individual Account Balance.** Every person who is a member of the Fire and Police Pension Plan – Tier 1 on July 1, 1982 shall, upon termination of employment be entitled to a refund of contributions made by him or her pursuant to the provisions of this section. A person not a member on July 1, 1982 and whose employment terminated prior to that date, shall not be entitled to a refund of contributions made by him or her during periods of membership prior to July 1, 1982.

The refund of contributions shall be subject to the following conditions and limitations:

- (1) **Refund on Termination.** Upon termination of employment as a member of the Fire Department or the Police Department for any reason except retirement pursuant to the provisions of this Tier 1, a member shall be entitled to have refunded to him or her all contributions made by such member to the Fire and Police Tier 1 Service Pension Fund (and any predecessor funds) prior to July 1, 1982, plus 6% per annum interest on such contributions calculated in the same manner as if interest had regularly been credited to the member's contributions, compounded as of the last day of the last pay period of December and to the end of the last pay period preceding the effective date of termination of employment.
- (2) **Forfeiture of Pension.** Members who elect to receive a refund of contributions, forfeit the right to benefits provided in this Tier 1. After payment of any pension benefit has commenced, a member forfeits the right to a refund of the member's contributions. Members who return to active duty from a disability pension may not thereafter have contributions made by them prior to their retirement on such disability pension refunded.
- (3) **Beneficiary Designation.** Members shall have the right to designate persons who shall be entitled to receive monies

to which a member would otherwise be entitled upon termination of employment, to be payable to such designated person or persons upon the member's death; except that no such monies shall become payable if any person should be entitled to any other benefit provided in this Tier 1. The Board shall adopt appropriate forms for the designation by members of persons who shall be a member's beneficiaries.

Sec. 1326. Overtime Work.

(a) **Time Off With Pay.** Whenever a member, for overtime work, shall take a period of time off with pay:

- (1) a deduction for pension purposes shall be made from such pay but only in the same amount as that which would have been deducted from his regular salary if such period had been one of regular work;
- (2) such pay shall be part of the salary assigned or attached to the rank or position held by him but only in the same amount as that which would have been his regular salary if such period had been one of regular work; and
- (3) such period shall be part of his years of aggregate service.

(b) **Cash Payment.** Whenever a member, for overtime work, shall receive a cash payment:

- (1) a deduction for pension purposes shall not be made from such payment;
- (2) such payment shall not be part of the salary assigned or attached to the rank or position held by him; and
- (3) the period of overtime work for which he shall receive such payment shall not be part of his years of aggregate service except that any period of a member's overtime work, for which he shall not have taken time off with pay, shall be credited, by the Board, as part of his years of aggregate service, upon his or his survivor's written request therefor, to the same extent as he would have been entitled to take therefor time off with pay but only to the extent, and not in excess thereof, that he, while a member, shall have had any period of absence from work without pay. Such request shall be accompanied with payment of the amount which would have been deducted for pension purposes from his regular salary if the period of overtime work, to the extent credited, had been one of regular work.

Sec. 1328. Cost of Living Adjustment.

(a) **Service, Disability and Survivor Pensions to Remain Unaffected Except as Adjusted for Cost of Living.** That all pensions granted in accordance with the provisions of Sections 1304, 1310, 1312, 1314 and 1316 concerning Service, Disability and Survivor Pensions shall remain in full force and effect for the period granted, and any increase or decrease of salaries of active members of the Fire and Police Departments shall not in any way affect the amount of the pensions to be paid to retired members of such departments, or to any other person pensioned pursuant to the provisions of this Tier 1, nor shall the amount of such pensions be changed for any other reason, except as otherwise specifically provided in this Tier 1.

(b) **Cost of Living Adjustment.** From and after July 1, 1961, pension payments on account of service-connected disability or death granted prior to June 30, 1960, shall be increased as follows:

(1) **Service Connected Disability Pension.** In the case of a disability pensioner retired under the provisions of Section 1310 concerning Service Connected Disability Pensions, the amount payable as of June 30, 1960, calculated, however, on the degree of disability as of June 26, 1961, shall be increased in the ratio which the consumer price index for the month of June, 1960, bears to the consumer price index for the month in which such pension became effective. The power vested in the Board under the provision of Section 1310 to change the amount of pension by reason of the degree of disability, as therein provided, is expressly continued and in the event of any such change after June 26, 1961, the amount established hereunder shall be increased or decreased in the ratio which the newly determined degree of disability bears to the degree of disability immediately preceding such change.

(2) **Service Connected Survivor Pension.** In the case of a widow, or child or children, entitled to a pension based on service-connected disability or death pursuant to Section 1314 concerning Service Connected Survivor Pensions, the amount payable, calculated as of June 30, 1960, shall be increased in the ratio which the sum of the consumer price indexes for the three-year period ending June 30, 1960, or lesser period where the original pension was calculated on a period of less than three years, bears to the sum of such indexes for the period during which salary was originally taken into account in determining the amount of such pension. In the case of a widow receiving an additional amount on account of a child or children pursuant to Section 1314 concerning Service Connected Survivor Pensions, the increase provided by this section shall first be calculated upon the amount due her, exclusive of such additional amount and the applicable percentage increase on account of children shall then be applied to her new pension amount.

(c) **Applicable Index.** The consumer price indexes referred to in this section shall be those published by the Bureau of Labor Statistics for the Los Angeles area (all items and commodity groups 1947-49 =100 base) and for those months for which a monthly index is not published, monthly indexes shall be established by a straight line interpolation between the published monthly indexes.

(d) **Inapplicability to Fluctuating Pensions.** This section shall not apply to any pension payment which fluctuates with the current salaries established for the several ranks and positions in the Fire or Police Department and in the event it is held by any final judgment or decree of a court of competent jurisdiction, after the effective date of this section that any person granted an increase under the provisions of this section is entitled to a fluctuating pension based upon such salary rates, then, from and after the effective date of such adjudication, this section shall have no further force or effect as to such person.

The additional liabilities assumed by Tier 1 under this section, shall be funded under the provisions of Section 1210(b)(1) concerning the Tier 1 Budget.

(e) **Minimum Pension Amount.** Each pension granted pursuant to this Tier 1, regardless of the type of the pension, which shall be less in amount than \$250 per month as of January 26, 1967 shall be increased to the amount of \$250 per month as of

February 1, 1967, and the monthly amount of such pension thereafter shall not be reduced to a monthly amount less than such increased monthly amount except pursuant to Section 1212 concerning Worker's Compensation.

(f) **Implementation of Minimum Pension Provisions.** Subject to and upon the conditions contained in this section, the minimum monthly amount of pension provided by subsection (e) shall be applicable, from and after July 1, 1967, to all pensions heretofore or hereafter granted pursuant to this Tier 1. The monthly amount of each pension which, as of August 1, 1967, is in a lesser monthly amount than the minimum monthly amount of pension provided by subsection (e), as augmented pursuant to subsection (g), shall be increased, effective as of the first day of the month, to the minimum monthly amount of pension so provided and as so augmented. Each pension granted after August 1, 1967, shall be in a monthly amount not less than the minimum monthly amount of pension provided, as of the effective date of the pension, by subsection (e), as augmented pursuant to subsection (g). The monthly amount of any pension which is or shall be affected by the minimum monthly amount of pension provided by subsection (e), as augmented pursuant to subsection (g):

(1) shall be subject to be reduced pursuant to Section 1212 concerning Worker's Compensation despite any other provisions of this Tier 1; and

(2) shall be subject to be reduced pursuant to Section 1310, Section 1314 or Section 1316 concerning certain disability and survivor pensions, whichever shall be applicable.

Any such reduction under subsection (f)(2) shall be made only if it shall not reduce the monthly amount of the pension to a lesser monthly amount than the monthly amount of pension to which it had been increased pursuant to subsection (b) or to a lesser monthly amount than the minimum monthly amount of pension provided by subsection (e), as augmented pursuant to subsection (g) effective as of the date of any such reduction, whichever shall be the greater.

(g) **Cost of Living Adjustments for Service and Survivor Pensions.** The Board, before May 1st of each year commencing with the year 1967, shall determine the percentage of the annual increase or decrease in the cost of living as of March 1st of that year from March 1st of the preceding year, as shown by the consumer price index published by the Bureau of Labor Statistics for the area in which the City of Los Angeles is located. If any such index were not to reflect the cost of living as of a particular March 1st, then the next preceding such index which had done so shall be used. If there were to be any change in the statistical method or the components which were used in any such index from those which were used in any such index of the preceding year with which a comparison is to be made, then the Board, to the extent possible, shall adjust any such differences therein for the purpose of determining the percentage of increase or decrease in the cost of living.

Commencing as of July 1st of the year in which the Board shall so determine the percentage of increase or decrease in the cost of living, the amounts of certain pensions, as hereinafter identified and upon the conditions hereunder stated therefor, shall be increased or decreased by reason of such determined percentage of increase or decrease in the cost of living but not to exceed, however, two percent (2%) in any given year. Such determined

percentage of increase or decrease in the cost of living, as so limited, shall be applied to the amounts of such pensions which shall be payable for the preceding month of June, including any previous percentage of increase or decrease in the cost of living made with respect thereto.

The percentage of increase or decrease in the cost of living first shall be applied to:

- (1) *Minimum Pensions Under Subsection (e).* The pension of any person, whose pension shall be increased pursuant to subsection (e) on July 1, 1967;
- (2) *Nonfluctuating Service Pensions of Persons Retired Prior to July 1, 1967.* The pension of any retired member who had been retired or who shall be retired pursuant to Section 1304 concerning Service Pensions prior to July 1, 1967, upon a pension which shall not increase or decrease upon the basis of any increase or decrease in the salaries of active members of the Fire Department or of the Police Department, upon July 1, 1967, if he shall have attained the age of 55 years prior to that date, or, if he shall not have attained such age prior to that date, upon the July 1st following the date upon which he shall have attained such age;
- (3) *Nonfluctuating Service Pensions of Persons Retired After July 1, 1967.* The pension of any retired member who shall be retired pursuant to Section 1304 concerning Service Pensions after July 1, 1967, upon a pension which shall not increase or decrease upon the basis of any increase or decrease in the salaries of active members of the Fire Department or of the Police Department, upon the July 1st following the effective date of his pension if he shall have attained the age of 55 years prior to that date or, if he shall not have attained such age prior to that date, upon the July 1st following the date upon which he shall have attained such age;
- (4) *Survivor Pensions Granted Prior to July 1, 1967 and Based Upon Nonfluctuating Service Pensions.* The pension of any widow, minor child or children or dependent parent or parents which had been or shall be granted pursuant to Section 1314 concerning Service Connected Survivor Pensions prior to July 1, 1967, following the death of a retired member who had been retired pursuant to Section 1304 with a Service Pension or of an active member who had become eligible to retire pursuant thereto, and which pension shall not increase or decrease upon the basis of any increase or decrease in the salaries of active members of the Fire Department or of the Police Department, upon July 1, 1967, if such retired member or such active member, as the case may be, would have attained the age of 55 years prior to that date if he had been alive on that date or, if he would not have attained such age prior to that date if he had been alive on that date, upon the July 1st following the date upon which he would have attained such age if he had been alive on that date; and
- (5) *Survivor Pensions Granted After July 1, 1967 and Based Upon Nonfluctuating Service Pensions.* The pension of any widow, minor child or children or dependent parent or parents which shall be granted pursuant to Section 1314 concerning Service Connected Survivor Pensions after July 1, 1967, following the death of a retired member who

had been retired pursuant to Section 1304 with a Service Pension or of an active member who had become eligible to retire pursuant thereto, and which pension shall not increase or decrease upon the basis of any increase or decrease in the salaries of active members of the Fire Department or of the Police Department, upon the July 1st following the effective date of such pension if such retired member or such active member, as the case may be, would have attained the age of 55 years prior to that date if he had been alive on that date or, if he would not have attained such age prior to that date if he had been alive on that date, upon the July 1st following the date upon which he would have attained such age if he had been alive on that date.

The amount of any pension referred to in subsections (g)(1), (2), (3), (4) or (5) hereof never shall be reduced, by reason of the application thereto of this section, to an amount less than the amount to which any pension referred to in subsection (e) shall be increased or to an amount less than the amount thereof originally granted.

(h) **Carryover of Excess Cost of Living Adjustment From Year to Year.** If the percentage of increase or decrease in the cost of living in any year, as determined by the Board, were to exceed 2% as compared with the cost of living as of March 1st of the preceding year, the percentage of increase or decrease in the cost of living in excess of 2% shall be carried over and added to or subtracted from the percentage of increase or decrease in the cost of living in the succeeding year, and such procedure shall be complied with from year to year.

(i) **Application of Cost of Living Adjustment to Other Pensions.** The provisions of subsection (g), if otherwise not applicable as of July 1, 1967 to any pension referred to in subsection (f), shall be applicable thereto, from and after July 1, 1967, to the same extent and in the same manner as they are applicable to any pension referred to in subsection (e). Any adjustments provided to be made in monthly amounts of pensions pursuant to subsection (g) shall be applicable to the monthly amounts of other pensions which are not referred to in that section or in the foregoing provisions of this section whenever the monthly amounts of any such other pensions otherwise would be in lesser monthly amounts than the minimum monthly amount of pension provided by subsection (e), as then augmented pursuant to subsection (g).

(j) **Additional Cost of Living Adjustments for Disability and Survivor Pensions.**

(1) *Special Definitions.* Wherever used in this subsection:

- (A) "the pension" shall mean, unless subsection (g) shall be mentioned in conjunction therewith, only a pension which is not identified in subsection (g), is not referred to in subsection (i) and is in an amount which shall not increase or decrease by reason of any increase or decrease in the salary of any active member;
- (B) "the July 1st following" shall mean only a July 1st after May 2, 1969; and
- (C) "person" shall include its plural.

(2) *Application of Subsection (g) Adjustments.* The percentage of increase or decrease in the cost of living hereafter shall be applied pursuant to subsection (g) and the terms and conditions contained in this section:

(A) *Disability Pensions.* To the pension of any retired member, ever retired pursuant to:

- (i) Section 1310 concerning Service Connected Disability Pensions, upon the July 1st following the date of this retirement or the effective date of this paragraph of this section, whichever shall be the later; or
- (ii) Section 1312 concerning Nonservice Connected Disability Pensions, upon the July 1st following the date he shall have attained the age of 55 years or the fifth anniversary of the effective date of the pension, whichever shall be the earlier;

(B) *Survivor Pensions.* To the pension of any person,

- (i) ever granted pursuant to Section 1314 or Section 1316 concerning Survivor Pensions upon the death of an active member not eligible to retire pursuant to Section 1304 concerning Service Pensions,
- (ii) ever granted pursuant to Section 1314 concerning Service Connected Survivor Pensions upon the death of an active member eligible to retire pursuant to Section 1304 concerning Service Pensions and which pension of such person is identified in subsection (g)(4) or (5),
- (iii) heretofore granted pursuant to Section 1316 concerning Nonservice Connected Survivor Pensions upon the death of a retired member previously retired pursuant to Section 1312 concerning Nonservice Connected Disability Pensions, or
- (iv) hereafter granted pursuant to Section 1316 concerning Nonservice Connected Survivor Pensions upon the death of a retired member previously retired pursuant to Section 1312 concerning Nonservice Connected Disability Pensions where the amount of the pension shall be calculated upon the salary specified in Section 1316 by reason of such person's written election therefor pursuant to Section 1318, upon the July 1st following: the date such member shall have attained the age of 55 years, the date such member would have attained such age if he then had been alive, or the fifth anniversary of the effective date of the pension of such person, whichever shall be the earliest. Pensions described in subsection (j)(2)(D) shall be adjusted upon the effective date specified in that subsection;

(C) *Other Survivor Pensions.* To the pension of any person,

- (i) ever granted pursuant to Section 1314 concerning Service Connected Survivor Pensions upon the death of a retired member previously retired pursuant to Section 1310 concerning Service Connected Disability,
- (ii) ever granted pursuant to Section 1314 concerning Service Connected Survivor Pensions upon the death of a retired member previously retired

pursuant to Section 1304 concerning Service Pensions and which pension of such person is identified in subsection (g)(4) or (5), or

- (iii) hereafter granted pursuant to Section 1316 concerning Nonservice Connected Survivor Pensions upon the death of a retired member previously retired pursuant to Section 1312 with a Nonservice Connected Disability Pension where the amount of the pension shall be calculated upon the salary specified in Section 1312 by reason of such person's written election therefor pursuant to Section 1318, upon the July 1st following the date such member shall have attained the age of 55 years, the date such member would have attained such age if he then had been alive, or the fifth anniversary of the effective date of the pension of such member, whichever shall be the earliest; and

(D) *Survivor Pensions Based Upon Line of Duty Death.*

To the pension of any person ever granted on account of the death of an active member of the Fire or Police Department who died as result of any injury received during the performance of his or her duties, or from sickness caused by the discharge of such duties, upon the July 1st following the effective date of such pension, but if such pension became effective before July 1, 1989, it shall be retroactively adjusted as of July 1, 1989.

- (3) *Procedure for Applying Cost of Living Adjustments to Certain Pensions.* The following provisions in respects other than those provided for in subsection (j)(2) of this section, hereafter shall be controlling the application to certain pensions of the percentage of increase or decrease in the cost of living.

(A) *Service Pensions and Widow Pensions.* Whenever the amount of the pension,

- (i) of any retired member shall be increased or decreased pursuant to Section 1310 concerning Service Connected Disability Pensions, or
- (ii) of any widow shall be increased or decreased pursuant to Section 1314 or Section 1316 concerning Survivor Pensions: the amount of any such increase shall not include the percentage of any increase in the cost of living which previously had been applied to the former amount of the pension; and the amount of any such decrease shall include the percentage of any increase in the cost of living which previously had been applied to it as a portion of the former amount of the pension.

(B) *Other Survivor Pensions.* Whenever the pension of any person,

- (i) hereafter shall be granted pursuant to Section 1314 concerning Service Connected Survivor Pensions upon the death of a retired member previously retired pursuant to Section 1304 with a Service Pension and which pension of such person is identified in subsection (g)(4) or (5),

- (ii) hereafter shall be granted pursuant to Section 1314 concerning Service Connected Survivor Pensions upon the death of a retired member previously retired pursuant to Section 1310 with a Service Connected Disability Pension, or
- (iii) hereafter shall be granted pursuant to Section 1316 concerning Nonservice Connected Survivor Pensions upon the death of a retired member previously retired pursuant to Section 1312 concerning Nonservice Connected Disability Pensions where the amount of the pension shall be calculated upon the salary specified in Section 1312 by reason of such person's written election therefor pursuant to Section 1318,

the amount of the pension of any such person (I) if the amount thereof which shall be payable to such person were to be more than the amount of the pension which had been payable to such member, shall include the percentage of any increase in the cost of living which had been applied to the pension of such member, or (II) if the amount thereof which shall be payable to such person were to be less than the amount of the pension which had been payable to such member, shall include that portion of the percentage of any increase in the cost of living which had been applied to the pension of such member which shall be in the same ratio as the amount of the pension which shall be payable to such person shall bear to the amount of the pension which had been payable to such member, and the percentage of any increase or decrease in the cost of living in excess of 2% per year which had been carried over for such member as of the date of his death shall be carried over for such person if (I) hereof were to be applicable or in the same ratio therein provided if (II) hereof were to be applicable.

- (C) *Pensions of Minor Children.* Whenever the pension of any widow hereafter shall be terminated pursuant to Section 1314 or Section 1316 concerning Survivor Pensions and the pension therein provided thereafter shall become payable pursuant thereto on behalf of any minor child or children of the deceased member, the amount of pension on behalf of such child or children shall include that portion of the percentage of any increase in the cost of living which had been applied to the pension of such widow which shall be in the same ratio as the amount of the pension which shall be payable on behalf of such child or children shall bear to the amount of the pension which had been payable to such widow, and the percentage of any increase or decrease in the cost of living in excess of 2% per year which had been carried over for such widow as of the date of the termination of her pension shall be carried over on behalf of such child or children in the same ratio hereinabove provided.
- (4) *Limitations on Subsection (g) Reductions.* The amount of the pension never shall be reduced, by reason of the

application thereto of the provisions of subsection (g) of this section, to an amount less than:

- (A) the amount thereof if subsection (b) is applicable,
- (B) the amount thereof if subsection (e) is applicable,
- (C) the amount thereof if subsection (f) is applicable, or
- (D) the amount thereof payable pursuant to provisions of this Tier 1, other than those of subsection (g) or this section, if none of the sections mentioned in (A), (B), or (C) above is applicable.

- (5) *Applicability.* Subsection (g) hereafter shall be construed and applied in accordance with this subsection (j) as to each pension mentioned in this subsection.

(k) **Monthly Minimum Pension.**

- (1) *Amount of Minimum Pension.* Each pension granted pursuant to this Tier 1, regardless of the type of the pension, which became or becomes effective prior to July 1, 1971 and which, as of June 30, 1971, is in a monthly amount of less than three hundred fifty dollars (\$350) shall be increased, effective July 1, 1971 pursuant to the provisions of subsections (k)(2) and (3), and shall, if such increase results in a monthly pension amount which is less than three hundred fifty dollars (\$350), be increased to provide for a monthly minimum pension of three hundred fifty dollars (\$350). Each pension granted pursuant to this Tier 1, regardless of the type of the pension, which becomes effective on or subsequent to July 1, 1971 shall be in a monthly amount not less than the minimum monthly pension amount provided, as of the effective date of the pension by this subsection of this section. The monthly amount of each such pension never shall be reduced, by reason of the provisions of subsection (g), subsection (i), subsection (j) or subsection (k)(3) of this section, to a monthly amount less than the minimum monthly pension amount provided by this subsection (k)(1).
- (2) *Amount of Increase.* The monthly amount of pension of each retired member or other person which, prior to July 1, 1971, had been increased by reason of a cost of living adjustment thereof pursuant to subsection (g), subsection (i) or subsection (j) shall be increased, as of July 1, 1971, by that portion of the percentage of the annual increase in the cost of living, as had been determined by the Board pursuant to subsection (g), which was in excess of 2% but not in excess of 3% for each year the monthly amount of such pension had been increased.
- (3) *Subsection (g) Adjustments.* The monthly amount of pension of each retired member or other person who heretofore did qualify or hereafter shall qualify for a cost of living adjustment thereof pursuant to subsection (g), subsection (i) or subsection (j) and the monthly amount of pension of each retired member or other person which shall be the minimum monthly pension amount provided by subsection (k)(1) of this section, hereafter shall be increased or decreased, as of the dates provided therefor by subsection (g), by the percentage of the annual increase or decrease in the cost of living as hereafter shall be determined by the Board pursuant to subsection (g).
- (4) *Applicability of This Subsection.* The provisions of Section 1304, 1310, 1312, 1314 and 1316, and subsections (b), (e), (f), (g), (i) and (j) of this section hereafter shall be

construed and applied in accordance with the provisions of this subsection (k).

- (5) **Savings Clause.** Should any provision of this subsection (k) at any time be held to be invalid, in their application to certain persons or periods of time, such invalidity shall not affect the validity of any provisions as to other persons entitled to benefits hereunder or the applicability as to other periods of time.

Sec. 1330. Authority of Council to Establish Certain Benefits by Ordinance.

(a) **Purpose of this Section.** It is the purpose of this section to enable the Council to provide by ordinance a program or programs whereby persons receiving pensions pursuant to the provisions of this Tier 1 may become eligible to have subsidy payments made on their behalf for health insurance, accident insurance, life insurance or health care plan coverage or coverage for any combination of such programs as determined by the Council and subject to such conditions of entitlement as may be set forth in any ordinance adopted in accordance with the provisions of this Tier 1.

(b) **Supermajority Vote Requirement.** Ordinances adopted pursuant to this section must be approved by not less than two-thirds of the membership of the Council, subject to the veto of the Mayor and readoption by the Council by three-fourths of the membership of the Council. No such ordinance may be finally adopted by the Council until the expiration of at least 30 days after its first presentation to the Council, nor until after a public hearing has been held.

Any ordinance adopted pursuant to this section shall go into effect upon its publication, but the terms of such ordinance, or portions thereof, may be operative at a later date or dates.

(c) **Limitations on Council's Authority.** An ordinance adopted pursuant to this section may not provide for subsidy payments for any individual, the total amount of which, including subsidy payments from a City fund or funds other than those created under Section 1320 of this Tier 1, would be in excess of the maximum available subsidy payment for beneficiaries under

the provisions of any ordinance adopted pursuant to the authority of Section 1168 of the Charter, nor may such subsidy payments be in excess of any amounts allowed active members of the Fire and Police Pension System.

(d) **Subsidy Program Administration.** Any subsidy program adopted by ordinance pursuant to this section shall be administered by the Board. The Board shall have the authority to contract for suitable programs as hereinabove defined in subsection (a) to be made available to retired members or other beneficiaries, and shall have the power to adopt rules necessary to administer the programs.

Notwithstanding the foregoing provisions, the Board may authorize the Personnel Department to administer any program or part established by ordinance pursuant to the provisions of this section. The Board shall reimburse the General Fund of the City of Los Angeles for all necessary expenses incurred by the Personnel Department as a result of administering these programs.

(e) **Change in Subsidy Amounts.** The Board, in its discretion, may by resolution increase or decrease the amount of subsidy payments on the following conditions only: (1) to reflect changes in subsidies provided for active members or (2) to offset any increases or decreases in the level of benefits referred to in subsection (a) or the cost thereof as a result of changes in existing benefits or the addition of newly created benefits by federal or state funded programs.

Sec. 1332. Compliance with Certain Internal Revenue Code Provisions.

(a) With the enactment of this section an election has been made as authorized under the provisions of Section 415(b)(10)(C) of the Internal Revenue Code to be bound by the limitations of Section 415 of the Code subject to the provisions of Section 415(b)(10)(A) and (B).

(b) If any of the provisions of Section 415 of the Internal Revenue Code should be repealed, the provisions of this section shall be deemed repealed to the same extent.

FIRE AND POLICE PENSION PLANS – TIER 2
(formerly Article XVIII)

Sec. 1400. Tier 2 Members.

Each person who shall be appointed as a Department Member on or after January 29, 1967 and through December 7, 1980 shall become a Tier 2 System Member as of the effective date of such appointment. Each person who was appointed as a Department Member prior to January 29, 1967 shall become a Tier 2 System Member as of the date upon which a request is filed as provided by Section 1402. In no event shall any other person become a Tier 2 System Member.

Sec. 1402. Request to Become a Tier 2 Member.

(a) **Filing of Request with Board.** Each Department Member who was appointed prior to January 29, 1967 shall have the right to become a Tier 2 System Member and may exercise such right only by filing a request with the Board by January 29, 1968, except as is hereinafter provided. Each such Department Member who shall be serving in the armed forces of the United States as of January 29, 1967 and who thereafter shall return to active duty as a Department Member, within the time required for job rights and other benefits, may exercise such right only by filing a request with the Board by January 29, 1968 or within 90 days immediately following such return to active duty, whichever shall be the later. Each person who shall be receiving a disability pension pursuant to Section 1310 or to Section 1312 of Tier 1 of this Article as of January 29, 1967 and who thereafter shall be restored to active duty as a Department Member may exercise such right only by filing a request with the Board by January 29, 1968 or within 90 days immediately following such restoration to active duty, whichever shall be the later. The legally appointed, qualified and acting guardian of the estate of any such Department Member may exercise such right for and on behalf of the Department Member only by filing a request with the Board by January 29, 1968, but Court approval first shall have been obtained.

(b) **Extension of Filing Time.** The Board, for good cause and in its discretion, may extend the time within which any such Department Member or the guardian of the estate of any such Department Member may file a request, whether the applicable period hereinabove prescribed shall have or shall not have elapsed, and may impose whatever terms and conditions which it shall deem to be reasonable and just for the giving of any extension of time.

(c) **Waiver of Pension Rights and Benefits in Tier 1.** Each request shall be in writing, shall be signed by such Department Member or by the legally appointed, qualified and acting guardian of the estate of such Department Member, shall contain his full and complete waiver of any and all present and future pension rights and benefits provided by Tier 1 of this Article, including derivative rights and benefits for widows and other beneficiaries, shall contain his full and complete release, discharge and acquittance of the City and the Board of and from any and all present and future liabilities for the payment of any benefits pursuant to Tier 1 and shall contain his election to become a Tier 2 System Member. The contents of the request need not be restricted to the aforementioned items and such request may include any and all provisions which the Board and the City Attorney may deem to be necessary or desirable to effectuate full

and complete release, discharge and acquittance by each such member of the City and the Board of and from any and all present and future liabilities for the payment of any benefits pursuant to Tier 1, and the Board, after the effective date of this Tier 2, shall have the power and authority to expend moneys for the preparation of requests and for the distribution of them to such Department Members.

(d) **Spousal Consent or Waiver by Board.** Each request, whether signed by such Department Member or by the guardian of his estate, shall be signed by the spouse of such Department Member whereby he or she shall freely and voluntarily join in and consent to everything contained therein with the same force and effect as if he or she had signed the same as a member, and such request, when so signed, shall be both effective and irrevocable upon filing with the Board. However, the Board, in its discretion but only upon the written request therefor by the particular Department Member involved, may waive the requirement that the request shall be signed by the spouse of such Department Member, except in the case of any Department Member who was appointed as a member of the Fire Department or of the Police Department prior to January 17, 1927, and such request, when signed by the Department Member or the guardian of his estate, shall be both effective and irrevocable upon filing with the Board after but not prior to the Board's action waiving the requirement.

Sec. 1404. Request By a Reactivated Member Under Tier 1 to Become a Tier 2 Member.

A reactivated member under Tier 1 of this Article who, after the effective date of his return to active duty shall have had five years of service as defined in Section 1306(a)(4)(C), shall have the right, pursuant to Section 1402, to become a System Member under this Tier 2. He may exercise such right only within the one year from and after the date upon which he shall have completed such five years of service. Any reactivated member who shall become a Tier 2 System Member also shall become a reactivated member under this Tier 2. Section 1402 hereafter shall be construed and applied, as to a reactivated member under Tier 1, in accordance with this section.

Sec. 1406. Definitions.

In addition to the words and phrases defined in the Fire and Police Pension Plans General Provisions in Part 3 and for the purposes of this Tier 2, the following words and phrases shall have the meaning ascribed to them in this section, unless a different meaning is clearly indicated by the context.

(a) **Member of the Fire Department:** Member of the Fire Department means a person duly and regularly appointed in the Fire Department, under civil service rules and regulations or provisions of the Charter, or both, governing the making of original regular and permanent appointments therein which require the serving of probationary periods but not of original emergency or temporary appointments therein, to perform duties as a firefighter for the City, under whatever designation such person may be described in any salary or departmental ordinance providing salaries for the members of the department. Such person shall be a member of the department only until his status as such shall be terminated by reason of his retirement, resignation or discharge or for any other reason.

(b) **Member of the Police Department:** Member of the Police Department means a person duly and regularly appointed in the Police Department, under civil service rules and regulations or provisions of the Charter, or both, governing the making of original regular and permanent appointments therein which require the serving of probationary periods but not of original emergency or temporary appointments therein and sworn in, as provided by law, to perform duties as a police officer for the City, under whatever designation such person may be described in any salary or departmental ordinance providing salaries for the members of the department. Such person shall be a member of the department only until his status as such shall be terminated by reason of his retirement, resignation or discharge or for any other reason.

(c) **System Member:** System Member means a person who is a Department Member and whose pension rights and benefits are governed by this Tier 2.

(d) **Qualified Surviving Spouse:** Qualified Surviving Spouse means a person who is the widow or widower of a deceased System Member or Retired Member who had been married:

- (1) to the System Member for at least one year prior to the date of his or her nonservice-connected death while a System Member, or
- (2) to the System Member as of the date of his or her service-connected death while a System Member, or
- (3) to the Retired Member for at least one year prior to the effective date of his or her retirement upon a service pension or upon a nonservice-connected disability pension pursuant, respectively, to Section 1408 or Section 1412(b), or
- (4) to the Retired Member as of the effective date of his or her retirement upon a service-connected disability pension pursuant to Section 1412(a).

(e) **Minor Child:** Minor Child means a person, but not including a person who is an illegitimate child of a deceased System Member or Retired Member who had not been legitimized by such member, who is a legitimate child, a legitimized child or an adopted child of such member, and who had not been adopted by a person of the same gender as such member prior to the date of his death, who is under the age of 18 years and who is not married. Such person shall be a minor child only until he shall be adopted by a person of the same gender as such member, shall attain the age of 18 years or shall marry, whichever shall be the earlier.

(f) **Dependent Child:** Dependent Child means a person, but not including a person who is an illegitimate child of a deceased System Member or Retired Member who had not been legitimized by such member, who is a legitimate child, a legitimized child or an adopted child of such member, and who had not been adopted by a person of the same gender as such member prior to the date of his death, who is not married and who, while under the age of 21 years, had become disabled, either prior or after the date of death of such member, from earning a livelihood for any cause or reason whatsoever, other than by reason of his own moral turpitude or as a result thereof. Such person shall be a dependent child only until he:

- (1) shall be adopted by a person of the same gender as such member or shall marry, whichever shall be the earlier, regardless of his age at the time of the occurrence of either

such event and whether or not he then is disabled from earning a livelihood; or

- (2) shall attain the age of 18 years if neither of the events mentioned in this subsection had occurred prior thereto and if, at that time, he is not disabled from earning a livelihood; or
- (3) shall cease to be disabled from earning a livelihood if none of the events mentioned in (1) and (2) had occurred prior thereto.

(g) **Dependent Parent:** Dependent Parent means a person who is a natural parent of a deceased System Member or Retired Member and to or for whom such member, during at least one year immediately preceding his death, contributed one half or more of such person's necessary living expenses and who is unable to pay such expenses without the receipt of a pension. Such person shall be a dependent parent only until he shall be able to pay his necessary living expenses.

(h) **Length of Service Pay:** Length of Service Pay means any additional gross monthly pay or one twelfth of any additional gross annual pay which, by reason of length of service, shall be provided by ordinance, upon the conditions therein set forth, for the System Member's permanent rank as of the date of the termination of his status as a Department Member.

(i) **Special Pay:** Special Pay means any additional gross monthly pay or one twelfth of any additional gross annual pay which, by reason of assignment to perform special duties other than hazardous duties, shall be provided by ordinance, upon the conditions therein set forth, for the System Member's permanent rank as of the date of the termination of his status as a Department Member.

(j) **Hazard Pay:** Hazard Pay means any additional gross monthly pay or one twelfth of any additional gross annual pay which, by reason of assignment to perform helicopter duties, two-wheel motorcycle duties or any other hazardous duties, shall be provided by ordinance, upon the conditions therein set forth, for the System Member's permanent rank as of the date of the termination of his status as a Department Member.

(k) **Assignment Pay:** Assignment Pay means any additional gross monthly pay or one twelfth of any additional gross annual pay which, by reason of assignment to perform special duties or hazardous duties, in a higher class, position, grade, code or other title than the lowest within the System Member's permanent rank, shall be provided by ordinance, upon the conditions therein set forth, as of the date of the termination of such System Member's status as a Department Member.

Any such assignment pay shall not be included in the sum of any System Member's Nonservice-Connected Pension Base but hereafter shall be included in the sum of his Normal Pension Base to the same extent and upon the same conditions as any hazard pay shall be included.

The provisions of this Tier 2 wherein the words "Normal Pension Base" are used hereafter shall be construed and applied in accordance with the provisions of this subsection.

(l) **Year:** Year means a period of 12 months or, in aggregating partial years for purposes of determining years of service, means 365 days.

(m) **Years of Service:** Years of Service means and includes only those periods during or for which the System Member as a Department Member of the Fire Department or of the Police

Department, or of both, and whether prior or subsequent to his becoming a System Member:

- (1) did or shall receive salary, whether in full or reduced amounts thereof;
- (2) did or shall receive either a service connected disability pension or a nonservice connected disability pension, whether pursuant to Tier 1 of the Charter or pursuant to this Tier 2, if he was or shall be restored to active duty as a Department Member and did or shall perform his duties as such for at least 1 year prior to again retiring or being retired pursuant to this Tier 2, which year shall not include any time off from work by reason of any injury or illness which had been caused by or contributed to by any injury or illness which had been sustained or suffered by him prior to such restoration;
- (3) is or shall become entitled, under any provision of general law or ordinance of the City, to credit toward retirement for periods of military service or military leave;
- (4) did or shall receive Workers' Compensation benefits for temporary disability on account of any injury or illness arising out of and in the course of employment; and
- (5) is or shall become entitled pursuant to any ordinance of the City.

In computing years of service, all partial years shall be aggregated but, after the aggregation, any remaining partial year shall be disregarded in the computation of any pension.

(n) **Partial Year of Service:** Partial Year of Service means any period mentioned in subsection (m) of this section which is less than 12 months.

Any partial year of service shall be calculated from the end of the member's last completed year of service to the end of the payroll period immediately prior to the date of his retirement and shall be counted as part of a System Member's years of service for his retirement upon a service pension hereafter granted or for a pension hereafter granted to his qualified surviving spouse, minor child or children, dependent child or children or dependent parent or parents if he hereafter shall die while upon a service pension hereafter granted or while eligible for a service pension.

Any such partial year of service, in the case of a System Member who shall have had less than 25 years of service, shall be credited in the same ratio of 2% of his Normal Pension Base as such partial year shall bear to a complete year and, in the case of a System Member who shall have had 25 years of service or more, shall be credited in the same ratio of 3% of his Normal Pension Base as such partial year shall bear to a complete year.

The provisions of subsection (m) of this section, Section 1408, Section 1410(a)(4)(m), Section 1412(a) and Section 1414(a)(5) & (6), (b) and (c) hereafter shall be construed and applied in accordance with the provisions of this subsection.

(o) **Normal Pension Base:** Normal Pension Base of any System Member means the sum of:

- (1) his monthly salary;
- (2) any length of service pay which he had received immediately preceding the date of his retirement or death or upon the last day he had performed duties as a Department Member;
- (3) any special pay which he had received immediately preceding the date of his retirement or death or upon the

last day he had performed duties as a Department Member; and

- (4) any hazard pay which he had received immediately preceding the date of his retirement or death or upon the last day he had performed duties as a Department Member or, if he had not received the same at either such time but had received such pay at some time prior thereto, 10% of the hazard pay which he had received at the time of the termination of his last assignment to hazardous duties for each year in the aggregate of his assignment to any hazardous duties not exceeding, however, ten years in the aggregate.
- (5) for only those System Members who completed at least 12 months service in a Deputy Chief position, which was exempt from civil service, and who did not retire in the position of Deputy Chief or Chief of Police, an additional supplement of a percentage of the difference in the amount of compensation between the Deputy Chief position and the System Member's compensation at the time of retirement. This percentage shall be prescribed by ordinance and shall apply for each year of service in the position of Deputy Chief, not to exceed the number of years as prescribed by ordinance.

Notwithstanding any of the foregoing, if a Retired Member were to be restored to active duty as a Department Member and thereby again were to become a System Member and if he again were to retire or to be retired without having performed his duties for at least 1 year subsequent to such restoration, which year shall not include any time off from work by reason of any injury or illness which had been caused by or contributed to by any injury or illness which had been sustained or suffered by him prior to such restoration, the Normal Pension Base which shall be applicable to his later retirement shall be the Normal Pension Base which had been applicable to his previous retirement.

(p) **Nonservice-Connected Pension Base:** Nonservice-Connected Pension Base of any System Member means the sum of:

- (1) the highest monthly salary provided, as of the date of the System Member's retirement or death, whichever shall first occur, for a Department Member then holding the basic rank of firefighter or police officer; and
- (2) the highest length of service pay provided, as of the date of the System Member's retirement or death, whichever shall first occur, for a Department Member then holding either of the basic ranks.

(q) **Monthly Salary:** Monthly Salary means the gross monthly salary or 1/12 of the gross annual salary which shall be provided by ordinance for the System Member's permanent rank as of the date of the termination of his status as a Department Member excluding, however, length of service pay, special pay and hazard pay as defined in this section.

(r) **Permanent Rank:** Permanent Rank means the rank or the position within the rank which shall be held, upon a permanent basis under applicable civil service rules and regulations or provisions of the Charter, or both, by the System Member immediately preceding the termination of his status as a Department Member, but does not mean any higher rank or any position within any higher rank in which the System Member then may be serving or theretofore may have served either a portion of

a probationary period or pursuant to an emergency or temporary appointment.

Sec. 1408. Service Pension.

(a) **Time of Retirement.** Any Tier 2 System Member under the age of 70 years who shall have 20 years of service or more shall be retired by order of the Board from further active duty as a Department Member either (a) upon the filing of a written application or (b) upon the filing of a written request by or on behalf of the head of the department in which the System Member is a Department Member if it shall be determined by the Board to be for the good of such department, other than for a cause or reason which would entitle such System Member to a disability pension pursuant to Section 1412, and the Board, if it shall so determine, shall state the cause or reason in its order retiring such Tier 2 System Member.

(b) **Physical Exam for Members Age 70 Years or More.** After a Tier 2 System Member has attained the age of 70, he shall annually submit to an examination by a regularly licensed, practicing physician selected by the head of the department who shall render a written report to such department as to whether or not the Tier 2 System Member is physically and mentally fit to continue his duties as a Department Member. If the Tier 2 System Member is found not to be physically and mentally fit to so continue his duties, he shall be retired effective the first day of the calendar month next succeeding that month in which the physician's report was received by the Board.

(c) **Pension Amount.** Any such Retired Member shall be paid thereafter and for life a monthly service pension in an amount which shall be equal to a percentage of his Normal Pension Base, to wit:

- (1) For less than 25 years of service: 2% thereof for each year of service;
- (2) For 25 years of service: 55% hereof; and for each year of service over 25 years of service, an additional 3% thereof, not exceeding in all, however, a maximum of 70% thereof, which maximum of 70% shall be applicable regardless of the Retired Member's length of service as a System Member or his age at retirement.

No Retired Member, retired pursuant to this section, ever shall be paid pension pursuant to Section 1412 concerning Disability Pensions.

Sec. 1410. Return or Recall to Active Duty.

(a) **Return to Active Duty.**

- (1) **Conditions for Return to Active Duty.** A retired member, whenever retired, may file, with the Chief of the department from which he retired, a written application to be returned to active duty therein only upon the conditions:

(A) **Service Retirement and Former Rank.** That his original retirement had been pursuant to Section 1408 relating to Service Pensions and had been from the Fire Department while holding a rank no higher than Engineer or from the Police Department while holding a rank no higher than Sergeant; and

(B) **Time Since Original Retirement and Age.** That, as of the filing date of the application, the period of his original retirement had been no longer than 3 years and he shall be under the age of 55 years; and

(C) **Medical Exam.** That he satisfactorily had passed a medical examination not more than 30 days prior to the effective date of his original retirement, but the Chief, if the effective date thereof had been prior to May 2, 1969, may waive the condition contained in this subsection.

- (2) **Subsequent Conditions for Return to Active Duty.** The Chief may approve any application only upon the conditions that, after the filing date thereof, the retired member:

(A) **Medical Exam.** Had passed a medical examination from which it had been determined that he would be capable of performing the duties which would be assigned to him if he were to be returned to active duty subject to approval by the Board; and

(B) **Certification.** Had certified, in writing, that he had read and understands the provisions of this section.

- (3) **Return to Rank at Original Retirement.** The Chief, if he were to approve the application, may return the retired member to active duty only in or to a vacant position in the rank held by him at the effective date of his original retirement.

- (4) **Status of a Reactivated Member of Tier 2.** Wherever words used in this subsection (a)(4) with respect to any pension granted or to be granted pursuant to Section 1414, they also shall mean and include the words, as used in Section 1422 (c)(3): "whether by reason of the provisions thereof or of those of Section 1414(b) and (c), including any additional pension amounts payable pursuant to Section 1414(a)(7)." A retired member, if he were to be returned to active duty, thereafter shall be known as a "reactivated member" and, as such:

(A) **Privilege, Not An Appointment.** His return to active duty shall be a privilege only and he shall be on probation for one year from and after the effective date thereof regardless of any other provision of law contained in the Charter or otherwise, and the Chief may terminate his service at any time during such year;

(B) **Original Pension Terminated.** His pension, granted by reason of his original retirement, shall be terminated by the Board as of the effective date of his return to active duty;

(C) **Method of Calculating Years of Service.** His service after the effective date of his return to active duty, for the purposes of this Tier 2 and regardless of any other provision of law contained in the Charter or otherwise, shall consist of only:

- (i) the days for which he shall be paid for performing his assigned duties,
 - (ii) his days of vacation with pay, and
 - (iii) his regular days off duty with pay,
- and one year of such service shall consist of a total of 365 such days;

(D) **Years of Service for Purposes of Civil Service and Related Purposes.** His aggregate years of service, for the purposes of his eligibility to advancement in accordance with civil service rules and regulations and

the payment of his salary and longevity pay or merit pay, shall consist of only his years of service prior to the effective date of his original retirement and his service after the effective date of his return to active duty;

(E) *Years of Service for Purposes of Tier 2.* His aggregate years of service, for the purposes of this Tier 2 and regardless of any other provision of law contained in the Charter or otherwise, shall consist of only his years of service prior to the effective date of his original retirement and his service subsequent to the effective date of his return to active duty, provided, however, that such service shall be for not less than one year as defined in subsection (a)(4)(C) of this section;

(F) *Salary, Longevity, & Merit Pay.* He shall be assumed to have a satisfactory standard of service and shall be paid the salary provided for his rank and the longevity pay or merit pay provided for his aggregate years of service as defined in subsection (a)(4)(E) of this section, subject, however, to all provisions applicable to the termination of payment of longevity pay or merit pay;

(G) *Payroll Deduction.* He shall have deductions made for pension purposes, pursuant to Section 1420 relating to Member Contributions – Tier 2, from his salary and longevity pay or merit pay;

(H) *Prohibition of Nonservice Connected Disability Pensions.* He never shall be entitled to a subsequent retirement pursuant to Section 1412(b) relating to Nonservice Connected Disability Pensions and his widow, his minor child or children (hereafter referred to in this subsection as “his child”) or his dependent parent or parents (hereafter referred to in this subsection as “his parent”) never shall be granted a pension pursuant Section 1414(a)(2) or (4) relating to Nonservice Connected Survivor Pensions;

(I) *Allowance of Service Connected Disability Pensions.* He shall be entitled to a subsequent retirement pursuant to Section 1412(a) relating to Service Connected Disability Pensions if he were to become eligible therefor and upon his death, if he theretofore had had such a subsequent retirement, a pension shall be granted pursuant to Section 1414(a)(3) relating to Service Connected Survivor Pensions to his surviving spouse, if she shall have been married to him as of the effective date of his subsequent retirement, or to his child or to his parent;

(J) *Allowance of Service Connected Survivor Pension.* His surviving spouse or his child or his parent, if he were to die while a reactivated member from any cause arising out of or from the performance of his duties, shall be granted a pension pursuant to Section 1414(a)(1) relating to Service Connected Survivor Pensions;

(K) *Allowance of Survivor Pension Upon Death of Re-activated Member.* His surviving spouse, (if she shall have been married to him for at least one year prior to the effective date of his original retirement or for at least one year after the effective date of his return to

active duty and prior to the date of his death), or his child or his parent, if he were to die while a reactivated member from any cause other than a cause arising out of or from the performance of his duties, shall be granted the same pension she would have received pursuant to Section 1414(a)(6) relating to Service Connected Survivor Pensions;

(L) *Reinstatement of Original Pension.* His pension, granted by reason of his original retirement, if his service were to be terminated during the one year from and after the effective date of his return to active duty for any reason other than by reason of his subsequent retirement pursuant to Section 1412(a) relating to Service Connected Disability Pensions, shall be reinstated by the Board, as of the effective date of the termination of his service, at the amount of pension which then would have been payable to him if he had not returned to active duty and, upon his death, the pension which shall be granted pursuant to Section 1414(a)(5) to his surviving spouse if she shall have been married to him for at least one year prior to the effective date of his original retirement, or to his child or to his parent, shall be calculated upon the Normal Pension Base upon which his pension had been calculated as of the effective date of his original retirement; and

(M) *Retirement as Reactivated Member.* He shall be entitled to a subsequent retirement pursuant to Section 1408 relating to Service Pensions for Tier 2, based upon his aggregate years of service as defined in subsection (a)(4)(E) and his pension shall be calculated upon a sum equal to the Normal Pension Base upon which his pension had been calculated as of the effective date of his original retirement (hereinafter referred to as “such base”), plus a percentage of the difference between such base and that which, if he had not had his original retirement, would have been his Normal Pension Base as of the effective date of his subsequent retirement, for his years of service subsequent to the effective date of his return to active duty as defined in subsection (a)(4)(C), so that such sum shall be such base plus:

- (i) 20% of such difference for one such year,
- (ii) 40% of such difference for two such years,
- (iii) 60% of such difference for three such years,
- (iv) 80% of such difference for four such years and
- (v) 100% of such difference for five or more such years or the equivalent of his Normal Pension Base as of the effective date of his subsequent retirement and upon his death, if he previously had had such a subsequent retirement, the pension which shall be granted pursuant to Section 1414(a)(5) to his surviving spouse, (if she shall have been married to him for at least one year prior to the effective date of his original retirement or for at least one year after the effective date of his return to active duty and prior to the effective date of his subsequent retirement), or to his child or to his parent, shall

be calculated upon the sum upon which his pension had been calculated as of the effective date of his subsequent retirement.

- (5) *Applicability of Tier 2 to Reactivated Members.* The provisions of this Tier 2 shall be construed and applied, as to a reactivated member, his surviving spouse, his child and his parent, in accordance with respectively applicable provisions of subsection (a)(4) of this section.

(b) Recall to Active Duty.

- (1) *Rules for Recall to Active Duty.* The Chief shall promulgate such rules and set standards as he may deem to be necessary or desirable with respect to recalling a retired member to active duty.

- (2) *Conditions for Recall to Active Duty.* A retired member, whenever retired, shall be eligible to be recalled to active duty in the department from which he retired only upon the conditions:

(A) *Service Retirement and Former Rank.* That his original retirement has been pursuant to Section 1408 and had been from the Fire Department while holding a rank lower than Fire Chief or from the Police Department while holding a rank lower than Chief of Police;

(B) *Certification.* That he had certified, in writing, that he had read and understands the provisions of this section; and

(C) *Consent to Recall.* That he voluntarily had consented to be recalled to active duty.

- (3) *Limitations on Recall.* The Chief may recall a retired member to active duty:

(A) *Rank at Retirement.* Only in or to a vacant position in the rank held by him at the effective date of his original retirement;

(B) *90 Day Limit.* For not to exceed 90 days in any one calendar year; and

(C) *Status Defined in this Section.* The salary, benefits and other terms and conditions of employment of any such recalled member shall be as provided under subsections (b)(5) and (b)(6) of this section.

- (4) *No Recall of Police Exceeding 12 Months Without Loss of Pension.* Recall of retired members of the Police Department may be approved for a period in excess of 90 days but not for more than 12 consecutive months, without loss of pension, in which case the salary, benefits and other terms and conditions of employment for such recalled police officers shall be established by ordinance.

- (5) *Status of Recalled Member.* A retired member, if he were to be recalled to active duty, thereafter shall be known as a "recalled member" and, as such:

(A) His recall to active duty shall be a privilege only and the Chief may terminate his service at any time;

(B) His pension shall be paid during the period of his recall to active duty;

(C) He shall be paid the salary provided for his rank and the longevity pay or merit pay provided for his aggregate years of service prior to the effective date of his original retirement;

(D) He shall have no deductions made for pension purposes, pursuant to Section 1420 relating to Member Contributions – Tier 2, from his salary and longevity pay or merit pay; and

(E) He, his surviving spouse, his minor child or children or his dependent parent or parents never shall be entitled to any pension benefits provided by Tier 1 or Tier 2 by reason of his service as a recalled member.

- (6) *Tier 2 Construed with Recalled Members Rules.* The provisions of this Tier 2 hereafter shall be construed and applied, as to a recalled member, his surviving spouse, his minor child or children and his dependent parent or parents, in accordance with respectively applicable provisions of subsection (b)(5) of this section.

Sec. 1412. Disability Pensions.

(a) **Service-Connected Disability.** Upon the filing of his written application for a disability pension or upon the filing of a written request by or on behalf of the head of the department in which he is a Department Member, any System Member whom the Board shall determine has become physically or mentally incapacitated by reason of injuries received or sickness caused by the discharge of the duties of such person as a Department Member, and who is incapable as a result from performing his duties, shall be retired by order of the Board from further active duty as a Department Member. Such Retired Member shall be paid thereafter and for life a monthly service-connected disability pension in an amount which shall be equal to the same percentage of his Normal Pension Base as the Board shall determine, from time to time, to be his percentage of disability. Such pension shall be in an amount not less than 50% and not more than 90% of such Retired Member's Normal Pension Base and not less than that percentage which he, if he shall have had 25 years of service or more at the time of his retirement pursuant to this subsection of this section, would have received had he retired pursuant to Section 1408 concerning Service Pensions, but such pension shall be reduced, pursuant to Section 1212 concerning Workers' Compensation, to an amount less than either or both of the aforementioned minimum amounts if the application of that section were to cause such result. Such pension may be terminated only pursuant to subsection (d) of this section. No Retired Member, while retired pursuant to this subsection of this section, ever shall be paid any pension pursuant either to Section 1408 concerning Service Pensions or to subsection (b) of this section concerning Nonservice Connected Disability Pensions.

(b) **Nonservice-Connected Disability.** Upon the filing of his written application for a disability pension by a System Member who shall have 5 years of service or more since the date of his last regular and permanent appointment as a Department Member including his service of the required probationary period, or upon the filing of a written request therefor with respect to such a System Member by or on behalf of the head of the department in which he is a Department Member, any System Member whom the Board shall determine has become physically or mentally incapacitated by reason of injuries or sickness other than injuries received or sickness caused by the discharge of the duties of such person as a Department Member, and who is incapable as a result thereof from performing his duties, and if the Board further shall determine that such disability was not due to or caused by the moral turpitude of such System Member, shall be retired by order

of the Board from further active duty as a Department Member. Such Retired Member shall be paid thereafter and for life a monthly nonservice-connected disability pension in an amount which shall be equal to 40% of his Nonservice-Connected Pension Base. Such pension may be terminated only pursuant to subsection (d) of this section. No Retired Member, while retired pursuant to this subsection of the section, ever shall be paid any pension pursuant either to Section 1408 concerning Service Pensions or to subsection (a) of this section concerning Service Connected Pensions.

(c) **Determination of Disability.** Upon the filing of any written application or request for a disability pension, as referred to in subsections (a) and (b) of this section, the Board:

- (1) shall cause the System Member to be examined by and a written report thereon rendered by at least three regularly licensed and practicing physicians selected by it;
- (2) shall hold a hearing with respect to such application or request; and
- (3) shall receive or hear such other evidence relating to or concerning the System Member's disability or claimed disability as may be presented to it.

The Board shall have the power to hear and determine all matters pertaining to the granting and denying of any such application or request for a disability pension. The Board first shall determine whether or not the System Member is incapable of or from performing his duties as a Department Member. If the Board were to determine that he is not so incapable, it then shall be the duty of the Board to deny the application or request. If the Board were to determine that he is so incapable, it then shall determine, pursuant to the language used in subsections (a) and (b) of this section, whether his incapacity or disability is service-connected or nonservice-connected. If the Board were to determine that it is service-connected, it then shall determine the percentage of his incapacity or disability, within the limitations prescribed in subsection (a) of this section, and shall grant the application or request accordingly. If the Board were to determine that it is nonservice-connected, it then shall determine whether his incapacity or disability was due to or caused by the moral turpitude of the System Member. If the Board were to determine that it was so caused, it then shall be the duty of the Board to deny the application or request. If the Board were to determine that it was not so caused, it shall grant the application or request in the percentage prescribed by subsection (b) of this section. The Board, upon its own motion or upon the written request of any Retired Member, retired pursuant to subsection (a) of this section, shall have the power to consider new evidence pertaining to the case of any such Retired Member and to increase or decrease the percentage of his incapacity or disability within the limitations prescribed in subsection (a) of this section. Any such increase or decrease shall be based only upon injuries or sickness for which he was retired. In the case of any former System Member who became such by reason of his resignation or discharge as a Department Member, the Board, in order to grant any application filed by him for a disability pension, must also determine, in addition to all of the foregoing, that any existing incapacity or disability upon his part occurred prior to the termination of his active status as a Department Member and had been continuous up to the date of the Board's determinations.

Any determination of the Board shall be made in writing but need state only the ultimate fact and not any of the evidentiary facts.

(d) **Termination of Disability Pensions.** The pension of any Retired Member, retired pursuant to subsection (a) or to subsection (b) of this section and whose active status as a Department Member had been terminated by reason of his retirement, shall cease when the incapacity or disability for which he had been retired shall cease and he either:

- (1) shall have been restored to active duty as a Department Member in the same permanent rank which he had held as of the date of his retirement; or
- (2) shall have been ordered restored to active duty as a Department Member in such same permanent rank and shall have declined, refused or neglected to report or to perform duties as such.

The pension of any Retired Member, retired pursuant to subsection (a) or to subsection (b) of this section and whose active status as a Department Member had been terminated by reason of his resignation or discharge as such, shall cease when the incapacity or disability for which he had been retired shall cease. The Board shall have the power to hear and determine, upon its own motion or otherwise, all matters pertaining to the terminating of any such pension. Any determination of the Board to terminate any such pension shall be made in writing but need state only the ultimate fact and not any of the evidentiary facts.

Sec. 1414. Survivorship Pensions.

(a) Qualified Surviving Spouse and Children of Former Marriage.

- (1) **System Member's Service-Connected Death.** The qualified surviving spouse of a System Member who shall die while he is a Department Member, by reason of injuries received or sickness caused by the discharge of his duties, shall be paid, for life a monthly pension in an amount which shall be equal to 50% of such System Member's Normal Pension Base or, alternatively, in an amount which shall be equal to 55% in the event that such member shall have had 25 years of service or more as of the date of his death.
- (2) **System Member's Nonservice-Connected Death.** The qualified surviving spouse of a System Member who shall have five years of service or more since the date of his last regular and permanent appointment as a Department Member including his service of the required probationary period and who shall die while he is a Department Member, by reason of injuries or sickness other than injuries received or sickness caused by the discharge of his duties, shall be paid, for life a monthly pension in an amount which shall be equal to 40% of such System Member's Nonservice-Connected Pension Base.
- (3) **System Member's Death While on Service-Connected Disability Pension.** The qualified surviving spouse of a Retired Member, who shall die while he is receiving a pension pursuant to Section 1412(a), shall be paid, for life a monthly pension in an amount which shall be equal to 50% of such Retired Member's Normal Pension Base or, alternatively, in an amount which shall be equal to 55% in the event that such member shall have had 25 years of service or more as of the effective date of his retirement.
- (4) **System Member's Death While on Nonservice-Connected Disability Pension.** The qualified surviving spouse of a

Retired Member, who shall die while he is receiving a pension pursuant to Section 1412(b), shall be paid, for life a monthly pension in an amount which shall be equal to 40% of such Retired Member's Nonservice-Connected Pension Base.

- (5) *System Member's Death While on Service Pension.* The qualified surviving spouse of a Retired Member, who shall die while he is receiving a pension pursuant to Section 1408 concerning Service Pensions, shall be paid, for life a monthly pension in an amount which shall be equal to the same percentage of such Retired Member's Normal Pension Base as the percentage which had been applicable to the calculation of his pension, provided, however, that the percentage of his Normal Pension Base shall not exceed 55% for the purposes of this subsection.
- (6) *System Member's Death While Eligible for Service Pension.* The qualified surviving spouse of a System Member who shall die while he is a Department Member eligible for a pension pursuant to Section 1408 concerning Service Pensions by reason of injuries or sickness other than injuries received or sickness caused by the discharge of his duties, shall be paid for life a monthly pension in an amount which shall be equal to the same percentage of such System Member's Normal Pension Base as the percentage thereof which would have been applicable to the calculation of his pension had he retired pursuant to Section 1408 concerning Service Pensions as of the date of his death but the percentage of his Normal Pension Base shall not exceed 55% for the purposes of this subsection.
- (7) *Additional Pension Amounts for Minor or Dependent Children.*
 - (A) *Children of Marriage to Qualified Survivor Spouse.* Whenever any System Member or Retired Member shall die and leave surviving him, in addition to a qualified surviving spouse, a minor child or children or a dependent child or children of his marriage to the qualified surviving spouse then such qualified surviving spouse shall be paid an additional monthly pension in an amount which shall be equal to 25% of the amount of her pension as a qualified surviving spouse granted pursuant to any of the foregoing paragraphs of this subsection while there is one minor or dependent child, 40% while there are two minor or dependent children or a combination, and 50% while there are three or more minor or dependent children or a combination, and such additional monthly pension shall be the exclusive property of such qualified surviving spouse and not the property of any such minor child or dependent child.
 - (B) *Surviving Spouse and Children of Former Marriage.* Whenever any System Member or Retired Member shall die and leave surviving him, in addition to a qualified surviving spouse, a minor child or children or a dependent child or children of his marriage to a former spouse, then the guardian or guardians of the estate or estates of any such minor child or children or dependent child or children shall be paid a monthly pension in an amount which shall be equal to 25% of the amount of the pension of the qualified surviving

spouse granted pursuant to this section while there is one minor or dependent child, 40% while there are two minor or dependent children or a combination, and 50% while there are three or more minor or dependent children or a combination, and such monthly pension shall be the exclusive property of such minor child or children or dependent child or children and not the property of the qualified surviving spouse.

- (C) *Surviving Spouse and Children of Present and Former Marriages.* Whenever any System Member or Retired Member shall die and leave surviving him, in addition to a qualified surviving spouse, a minor child or children or a dependent child or children of his marriage to the qualified surviving spouse and a minor child or children or a dependent child or children of his marriage to a former spouse, then a monthly pension shall be paid in an amount which shall be equal to 25% of the amount of the pension of the qualified surviving spouse granted pursuant to any of the foregoing paragraphs of this subsection while there is one minor or dependent child, 40% while there are two minor or dependent children or a combination, and 50% while there are three or more minor or dependent children or a combination. The amount of such monthly pension shall be divided by the number of minor or dependent children and shall be adjusted accordingly whenever any minor or dependent child shall cease to be such. The qualified surviving spouse shall be paid the portion of such monthly pension which shall be applicable to the number of her minor children or dependent children and the same shall be her exclusive property. The guardian or guardians of the estate or estates of the minor or dependent children who are not those of the qualified surviving spouse shall be paid the portion of such monthly pension which shall be applicable to such minor or dependent children and the same shall be the exclusive property of such children.

- (8) *Reinstatement of Pension of Reinstated Qualified Surviving Spouse.* Subject to Section 1208 of the General Provisions for Fire and Police Pension Plans, any qualified surviving spouse who shall marry and thereby cease to be a qualified surviving spouse, shall be reinstated as a qualified surviving spouse as of:

- (A) the date upon which a judgment or decree shall become final dissolving such marriage upon any ground or declaring a void or voidable marriage to have been null and void or voided, if such date shall be within five years from the date of the marriage ceremony; or
- (B) the date upon which such marriage shall be dissolved by the death of the other party if such date shall be within five years from the date of the marriage ceremony.

Such reinstated qualified surviving spouse shall be entitled to the reinstatement of her pension effective as of either such date, whichever shall be applicable, but shall not be entitled to the payment of any pension for the period prior to such applicable date and subsequent to the date of the

marriage ceremony. The pension paid to any other Beneficiary or Beneficiaries during the period of the marriage or purported marriage of such reinstated qualified surviving spouse shall cease when her pension shall be reinstated, except as is otherwise provided in subsection (a)(7) of this section. However, should such reinstated qualified surviving spouse thereafter be a party to another marriage ceremony, her pension as such shall cease and never again shall be reinstated regardless of whether such marriage ceremony shall result in a valid marriage or in a voidable or void marriage and whether or not the same legally shall be terminated.

(b) **Pension For Minor and Dependent Children.** Whenever any System Member or Retired Member shall die, without leaving a qualified surviving spouse, the guardian of the estate of his minor child or children or dependent child or children shall be paid, until each such child shall cease to be a minor child or dependent child, a monthly pension pursuant to subsections (a)(1), (2), (3), (4), (5) and (6) of this section, whichever shall be applicable. Whenever any such member shall die, leaving a qualified surviving spouse who thereafter shall die or who thereafter shall cease to be a reinstated qualified surviving spouse, the guardian of the estate of his minor child or children or dependent child or children shall be paid, until each such child shall cease to be a minor child or dependent child, a monthly pension pursuant to one of the aforementioned paragraphs of subsection (a) of this section, whichever shall be applicable. In either of the foregoing events and if there were to be more than one minor child or dependent child, an equal share of such monthly pension shall be paid for and on behalf of each such child to the guardian of his estate and shall be adjusted as each of them shall cease to be a minor child or dependent child in the manner set forth in subsection (a)(7) of this section.

(c) **Pension for Dependent Parents.** Whenever any System Member or Retired Member shall die, without leaving a qualified surviving spouse or a minor child or dependent child, a monthly pension pursuant to subsections (a)(1), (2), (3), (4), and (5) of this section, whichever shall be applicable, shall be paid to his dependent parent or parents or to the survivor of them until each such dependent parent shall cease to be such. Any dependent parent who shall cease to be such but who thereafter again shall become unable to pay his or her necessary living expenses without a pension shall be entitled to have his or her pension reinstated.

(d) **Determinations With Respect to Cause of Death, Dependent Child and Dependent Parent.** The Board shall have the same power as that which has been given to it by Section 1412(c) and (d) in order to determine:

- (1) the fact of whether a System Member's death was service-connected or nonservice-connected for the purposes of Section 1414(a)(1) and (2);
- (2) the fact of whether or not a child of a deceased System Member or Retired Member is a dependent child; and
- (3) whether or not any parent of a deceased System Member or Retired Member is a dependent parent.

The Board also shall have the power to determine, from time to time, the fact of whether or not a child who had been determined by it to be a dependent child continues to be a dependent child, the fact of whether or not a parent who had been determined by it

to be a dependent parent continues to be a dependent parent and the fact of whether or not a dependent parent who had ceased to be such thereafter shall have become entitled to have his or her pension reinstated.

(e) **Medical Reports and Hearings.** The power of the Board to determine the fact of whether a System Member's death was service-connected or nonservice-connected, as provided in subsection (d) of this section, hereafter may be exercised by it upon the basis of a written report from one regularly licensed and practicing physician selected by it, provided, however, that it, in its discretion, may obtain such a report from more than one physician. The determination hereinbefore referred to in this paragraph may at the option of the Board be made without a hearing pursuant to the provisions of subsection (d) of this section.

Sec. 1416. Tier 2 Pension Funds.

(a) **Creation of Funds.** Two entirely separate and distinct funds hereby are created and established for the payment of pension benefits pursuant to this Tier 2, certain other benefits as may be authorized from time to time pursuant to the enabling provisions of Section 1428 of this Tier 2 and for the payment of the administrative expenses of the Fire and Police Pension Plan – Tier 1 and Tier 2, one of which shall be known as the "Fire and Police Tier 2 Service Pension Fund" and the other of which shall be known as the "Fire and Police Tier 2 General Pension Fund".

The Fire and Police Tier 2 Service Pension Fund shall consist of:

- (1) deductions made, pursuant to Section 1420, from the salaries of System Members;
- (2) all contributions and donations to the Fire Department or to the Police Department for services by any System Members, except amounts of money donated to provide for any medal or permanent competitive award;
- (3) all fines imposed upon System Members for violations of rules and regulations of the respective department in which they are Department Members;
- (4) all proceeds from the sale of unclaimed property; and
- (5) all interest, earnings and profits resulting from investments of such moneys.

The Fire and Police Tier 2 General Pension Fund shall consist of:

- (1) all moneys appropriated to the fund by the Council; and
- (2) all interest, earnings and profits resulting from investments of such moneys.

(b) **Use of Funds.** The moneys in the Fire and Police Tier 2 Service Pension Fund shall be used, other than for the investment thereof, exclusively for the payment of service pensions granted pursuant to Section 1408. The money in the Fire and Police Tier 2 General Pension Fund shall be used, other than for the investment thereof and except as hereinafter in this immediate paragraph specifically provided, exclusively for the payment of all pensions other than service pensions, such benefits as may be provided by ordinance adopted pursuant to the provisions of Section 1428 of this Tier 2 and of all administrative expenses of the Fire and Police Pension Plan Tier 1 and Tier 2 of the Charter.

(c) **Transfer of Funds.** In the event that the moneys in the Fire and Police Tier 2 Service Pension Fund should be insufficient, at any time, to pay all service pensions, then the Board shall have

the power and authority to cause the Controller of the City to transfer to the fund sufficient money from the Fire and Police Tier 2 General Pension Fund. In no other event shall any of the money in either of the funds be commingled with any of the money in the other funds.

(d) **General Obligations of City.** In the event that the moneys in the Fire and Police Tier 1 Service Pension Fund or in the Fire and Police Tier 1 General Pension Fund should be insufficient, at any time, to pay all pensions or other benefits which are payable therefrom, respectively, then the Board shall have the power and authority to cause the Controller of the City to transfer to either of the funds sufficient moneys from the Fire and Police Tier 2 General Pension Fund. The obligations to pay benefits pursuant to this Tier 2 shall be general obligations of the City.

Sec. 1418. Actuarial Standards.

(a) **Reserve Basis.** The Tier 2 System shall be maintained on a reserve basis which, for the purposes of this Tier 2, shall mean one which provides for the accumulation and maintenance of the Fire and Police Tier 2 Service Pension Fund and the Fire and Police Tier 2 General Pension Fund which together will at all times be equal to the difference between the present value of the obligations assumed and the present value of the money to be received for paying such obligations, where such present values are estimated in accordance with accepted actuarial methods and on the basis of an assumed rate of interest and the mathematical probabilities of the occurrence of such contingencies as affect both the payment of the assumed obligations and the receipt of moneys with which they are to be paid in accordance with the provisions of Sections 1210(b)(2) and 1420.

(b) **Actuarial Valuation.** The Board shall secure an actuarial valuation showing the cost of maintaining the System and funds on such reserve basis and, at intervals of not to exceed five years, shall cause to be made an actuarial investigation including, but not limited to, the mortality, service and salary experience of the System Members and other beneficiaries and shall further cause to be made annually an actuarial valuation of the assets and liabilities of the funds. The Board shall retain a competent consulting actuary for the purpose of making the necessary actuarial studies and reports on the required investigations and valuations.

(c) **Interest Rate.** The Board, from time to time and with the advice of the investment counsel, shall establish an assumed interest rate as in its judgment seems proper in the light of the experience and prospective earnings on the investments of the funds.

(d) **Unrealized Profits or Losses.** With the advice of the consulting actuary and of the investment counsel, the Board, for the purpose of the actuarial valuations, shall provide by rule for the manner and to the extent to which any unrealized profits or losses in the equity-type investments of the funds shall be taken into account.

Sec. 1420. Member Contributions – Tier 2

(a) **Member Contributions Required.** Deductions shall be made from the salaries of System Members, and such deductions shall be deposited to the credit of and paid into the Fire and Police Tier 2 Service Pension Fund, but no further deductions shall be made from the salaries of System Members who have completed 30 years of service.

(b) **Payroll Deduction.** The administrative head of the Fire Department and of the Police Department shall cause to be shown on each and every payroll of such department a deduction equal to the sum of the following items:

- (1) 6% of the amount of salary, as shown on each such payroll, of each System Member whose name appears thereon; and
- (2) that percentage of the amount of salary, as shown on each such payroll, of each System Member whose name appears thereon, but not to exceed 1%, which shall be equal to 1/2 of the cost of the cost of living benefits provided in this Tier 2 as shall be determined by the Board upon an actuarial valuation obtained by it pursuant to Section 1418.

The Board, from time to time, shall certify in writing to the administrative head of each such department and to the Controller any change in the deductions to be made pursuant to subsection (b)(2) above, and any such change shall become effective as of the next following July 1.

(c) **Transfer of Total Member Contributions.** The administrative head of each department shall certify to the Controller on each payroll the amount to be deducted from the salary of each System Member whose name appears thereon, and shall cause to be drawn a payroll check in favor of the Board for the total amount of deductions from the salaries of such System Members as shown on each payroll of such department, and the Board shall deposit the payroll check to the credit of the Fire and Police Tier 2 Service Pension Fund. It shall be the duty of the administrative head of each department to cause to be furnished to the Board a copy of each and every payroll.

(d) **Deemed Consent to Payroll Deduction.** Each System Member shall be deemed to consent and agree to each deduction as provided herein, and the payment of each payroll check to the System Member shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by the System Member during the period covered by each such payroll check, except such claims as the System Member may have to the benefits or payments provided by this Tier 2.

(e) **Refund of Member Contributions.** Every person who is a System Member on July 1, 1982 shall, upon termination of employment, be entitled to a refund of contributions made by him or her pursuant to the provisions of this section. A person not a System Member on July 1, 1982 and whose employment terminated prior to that date, shall not be entitled to a refund of contributions made by him or her during periods of membership prior to July 1, 1982.

(f) **Limitations on Refunds.** The refund of contributions shall be subject to the following conditions and limitations:

- (1) *Contributions Prior to June 30, 1982.* Upon termination of employment as a Department Member for any reason except retirement pursuant to the provisions of this Tier 2, a System Member shall be entitled to have refunded to him or her all contributions made by such System Member to the Fire and Police Tier 2 Service Pension Fund on or prior to June 30, 1982, plus 6% interest per annum on such contributions calculated in the same manner as if interest had regularly been credited to the System Member's contributions, compounded as of the last day of the last pay period of December and to the end of the last pay period preceding the effective date of termination of employment.

- (2) *Maintenance of Individual Accounts.* Starting July 1, 1982, the Board shall maintain an individual account of the contributions of each System Member. Regular interest shall be credited to such individual accounts as of the last day of June and December of each year after July 1, 1982, at such rate as the Board may deem proper in light of the earnings of the funds of the Tier 2 System, exclusive of profits and losses on principal resulting from sales of securities. No such interest shall be credited at any other time. Interest shall be credited to the individual account of a System Member whose employment is terminated for any reason for any period of service between the next preceding last day of June or December and the end of the pay period preceding the date of such termination at the rate at which regular interest was last credited to System Members' individual accounts.
- (3) *Election of Refund or Benefits.* System Members who elect to receive a refund of contributions, forfeit the right to benefits provided in this Tier 2. After payment of any pension benefit has commenced, the System Member forfeits the right to a refund of his or her contributions. System Members who return to active duty from a disability pension may not thereafter have contributions made by them prior to their retirement on such disability pension refunded. A terminated System Member who had elected to have contributions returned, but who reenters service and again becomes a System Member shall, not withstanding any provision of this Tier 2 to the contrary, not be entitled to credit for years of service previously earned unless he or she shall first have repaid the amount of contributions and interest and an amount calculated as interest which would have been earned between the date of original termination of status as a System Member and the date of reentry into service as a Department Member.
- (4) *Beneficiary Designation.* System Members shall have the right to designate persons who shall be entitled to receive money to which a System Member would otherwise be entitled upon termination of employment, to be payable to such designated person or persons upon the System Member's death, but no such money shall become payable if any person should be entitled to any other benefit provided in this Tier 2. The Board shall adopt appropriate forms for the designation by System Members of persons who shall be his or her beneficiaries.

Sec. 1422. Cost of Living Adjustments.

(a) **Determination of Cost of Living Increase or Decrease.** The Board, before May 1, of each year commencing with the year 1967, shall determine the percentage of the annual increase or decrease in the cost of living as of March 1, of that year from March 1, of the preceding year, as shown by the consumer price index published by the Bureau of Labor Statistics for the area in which the City is located. If any such index were not to reflect the cost of living as of a particular March 1, then the index for the closest preceding date which shall have done so shall be used. If there were to be any change in the statistical method or the components which were used in any such index from those which were used in any such index of the preceding year with which a comparison is to be made, then the Board, to the extent possible, shall adjust any such differences therein for the purpose of

determining the percentage of increase or decrease in the cost of living.

(b) **Adjustments to be Made in Pensions.** Commencing as of July 1 of the year in which the Board shall determine the percentage of increase or decrease in the cost of living, the monthly amounts of certain pensions, as hereinafter identified and upon the conditions hereunder stated therefor, shall be increased or decreased by reason of such determined percentage of increase or decrease in the cost of living but not to exceed, however, 2% in any given year. Such determined percentage of increase or decrease in the cost of living, as so limited, shall be applied to the monthly amounts of such pensions which shall be payable prior to the applicable July 1, including any previous percentage of increase or decrease in the cost of living which had been made with respect thereto.

(c) **Application of Adjustments.** The percentage of increase or decrease in the cost of living first shall be applied to:

- (1) *Service Pensioners with Less than 25 Years Service.* The pension of any Retired Member who shall retire pursuant to Section 1408, with less than 25 years of service, upon the July 1 following the date upon which he would have had 25 years of service if he had not retired prior thereto;
- (2) *Service Pensioners with at Least 25 Years Service.* The pension of any Retired Member who shall retire pursuant to Section 1408, with 25 years of service or more upon the July 1, following the effective date of his pension;
- (3) *Survivor Pensions of Members with Less Than 26 Years Service.* The pension of any Beneficiary or Beneficiaries which shall be granted pursuant to Section 1414(a)(5) and (6), whether by reason of the provisions thereof or of those of Section 1414(b) and (c), including any additional pension amounts payable pursuant to Section 1414(a)(7), following the death, with less than 26 years of service, of a Retired Member who had been retired pursuant to Section 1408 or of a System Member who had become eligible to retire pursuant thereto, upon the July 1, following the date upon which such Retired Member or such System Member, as the case may be, would have had 26 years of service if he, the Retired Member, had not retired prior thereto and had been alive on that date, or if he, the System Member, had been alive on that date; and
- (4) *Survivor Pensions of Members with at Least 26 Years Service.* The pension of any Beneficiary or Beneficiaries which shall be granted pursuant to Section 1414(a)(5) or (6), whether by reason of the provisions thereof or of those of Section 1414(b) or (c), including any additional amounts payable pursuant to Section 1414(a)(7), following the death, with 26 Years of Service or more, of a Retired Member who had been retired pursuant to Section 1408 or of a System Member who had become eligible to retire pursuant thereto, upon the July 1, following the effective date of the pension of such Beneficiary or Beneficiaries.
- (5) *Certain Survivor Pension Beneficiaries.* The pension which shall become payable to any minor child or children or dependent child or children, whenever any qualified surviving spouse or reinstated qualified surviving spouse shall cease to be such, shall commence in the same monthly amount which then would have been payable if such pension had become effective upon the date following

the date of death of the System Member or Retired Member and thereafter it shall be adjusted as otherwise provided in this section. The pension which shall become payable to any reinstated qualified surviving spouse, as reinstated pursuant to Section 1414(a)(8), shall commence in the same monthly amount which then would have been payable if she never had ceased to be a qualified surviving spouse and thereafter it shall be adjusted as otherwise provided in this section. The pension which shall become payable to any reinstated dependent parent or parents, as reinstated pursuant to Section 1414(c), shall commence in the same monthly amount which then would have been payable if he or she or each of them never had ceased to be a dependent parent and thereafter it shall be adjusted as otherwise provided in this section.

- (6) **Limitation on Reductions.** The amount of any pension referred to in (1), (2), (3), (4) or (5) of this subsection never shall be reduced, by reason of the application thereto of this section, to an amount less than the amount thereof payable pursuant to the provisions of this Tier 2 other than those of this section.

(d) **Carryover of Excess Adjustments.** If the percentage of increase or decrease in the cost of living in any year, as determined by the Board, were to exceed 2% as compared with the cost of living as of March 1, of the preceding year, the percentage of increase or decrease in the cost of living in excess of 2% shall be carried over and added to or subtracted from the percentage of increase or decrease in the cost of living in the succeeding year, and such procedure shall be complied with from year to year.

Sec. 1424. Cost of Living Adjustments to Pensions Formerly Excluded.

- (a) **Definitions.** Wherever used in this section:

- (1) "the pension" shall mean, unless Section 1422 shall be mentioned in conjunction therewith, only a pension which is not identified in Section 1422;
- (2) "the July 1 following" shall mean only a July 1 subsequent to May 2, 1969;
- (3) "Beneficiary" shall include its plural; and
- (4) words with respect to any pension granted or to be granted pursuant to Section 1414 also shall mean and include the words, as used in Section 1422(b)(3), "whether by reason of the provisions thereof or of those of Section 1414(b) and (c), including, any additional pension amounts payable pursuant to Section 1414(a)(7)."

(b) **Method.** The percentage of increase or decrease in the cost of living thereafter shall be applied pursuant to Section 1422 and the terms and conditions contained in this section:

- (1) **Disability Pensions.** To the pension of any Retired Member, ever granted pursuant to Section 1412, upon the July 1, following the date of his retirement or the effective date of this paragraph of this section, whichever shall be the later; or Section 1412, upon the July 1, following the date he shall have had 25 years of service, the date he would have had 25 years of service if he previously had not retired or the fifth anniversary of the effective date of the pension, whichever shall be the earliest;

- (2) **Survivor Pensions Based Upon Previously Active Members.** To the pension of any Beneficiary ever granted on account of the death of an active System Member who died as a result of any injury received during the performance of his or her duties or from sickness caused by the discharge of such duties, upon the July 1, following the effective date of such Beneficiary's pension; but if such pension became effective before July 1, 1989, it shall be retroactively adjusted as of July 1, 1989;

- (3) **Survivor Pensions Based Upon Previously Retired Members.** To the pension of any Beneficiary,

- (A) ever granted pursuant to Section 1414(a)(5) upon the death of a Retired Member previously retired pursuant to Section 1408 and which pension of such Beneficiary is identified in Section 1422(b)(3) or (4),
- (B) ever granted pursuant to Section 1414(a)(3) upon the death of a Retired Member previously retired pursuant to Section 1412(a), or
- (C) ever granted pursuant to Section 1414(a)(4) upon the death of the Retired Member, previously retired pursuant to Section 1412(b), upon the July 1 following the date such member shall have had 26 years of service, the date such member would have had 26 years of service if he previously had not retired and then had been alive, or the fifth anniversary of the effective date of the pension of such member, whichever shall be the earliest; and

- (4) **Survivor Pensions of Nonservice Connected Death of Members.** To the pension of any Beneficiary,

- (A) ever granted pursuant to Section 1414(a)(2) upon the death of a Department Member not eligible to retire pursuant to Section 1408, or
- (B) ever granted pursuant to Section 1414(a)(6) upon the death of a Department Member eligible to retire pursuant to Section 1408 and which pension of such Beneficiary is identified in Section 1422(b)(3) or (4), upon the July 1 following the date such member shall have had 26 years of service, the date such member would have had 26 years of service if he then had been alive, or the fifth anniversary of the effective date of the pension of such Beneficiary, whichever shall be the earliest.

(c) **Cost of Living Adjustments for Other Pensions.** The following provisions, in respects other than those provided for in subsection (b) of this section, hereafter shall be controlling in the application to certain pensions of the percentage of increase or decrease in the cost of living.

- (1) Whenever the amount of the pension:
 - (A) of any Retired Member shall be increased or decreased pursuant to Section 1412(a) or (c), or
 - (B) of any qualified surviving spouse shall be increased or decreased pursuant to any paragraph of Section 1414(a), the amount of any such increase shall not include the percentage of any increase in the cost of living which previously had been applied to the former amount of the pension; and the amount of any such decrease shall include the percentage of any increase

in the cost of living which previously had been applied to it as a portion of the former amount of the pension.

- (2) Whenever the pension of any Beneficiary:
- (A) hereafter shall be granted pursuant to Section 1414(a)(5) upon the death of a Retired Member previously retired pursuant to Section 1408 and which pension of such Beneficiary is identified in Section 1422(b)(3) or (4),
 - (B) hereafter shall be granted pursuant to Section 1414(a)(3) upon the death of a Retired Member previously retired pursuant to Section 1412(a), or
 - (C) hereafter shall be granted pursuant to Section 1414(a)(4) upon the death of a Retired Member previously retired pursuant to Section 1412(b), the amount of the pension of any such Beneficiary,
 - (i) if the amount thereof which shall be payable to such Beneficiary were to be more than the amount of the pension which had been payable to such member, shall include the percentage of any increase in the cost of living which had been applied to the pension of such member, or
 - (ii) if the amount thereof which shall be payable to such Beneficiary were to be less than the amount of the pension which had been payable to such member, shall include that portion of the percentage of any increase in the cost of living which had been applied to the pension of such member which shall be in the same ratio as the amount of the pension which shall be payable to such Beneficiary shall bear to the amount of the pension which had been payable to such member, and the percentage of any increase or decrease in the cost of living in excess of 2% per year which had been carried over for such member as of the date of his death shall be carried over for such Beneficiary if (i) hereof were to be applicable or in the same ratio therein provided in (ii) hereof were to be applicable.
- (3) Whenever the pension of any qualified surviving spouse hereafter shall be terminated pursuant to any provisions of Section 1414(a) and the pension thereafter shall become payable on behalf of any minor or dependent child or children of the deceased member, the amount of pension on behalf of such child or children shall include that portion of the percentage of increase in the cost of living which had been applied to the pension of such qualified surviving spouse which shall be in the same ratio as the amount of the pension which shall be payable on behalf of such child or children shall bear to the amount of the pension which had been payable to such qualified surviving spouse, and the percentage of any increase or decrease in the cost of living in excess of 2% per year which had been carried over for such qualified surviving spouse as of the date of the termination of his or her pension shall be carried over on behalf of such child or children in the same ratio hereinabove provided.

(d) **Limitation of Reductions.** The amount of the pension never shall be reduced, by reason of the application thereto of the provisions of Section 1422 or this section, to an amount less than

the amount thereof payable pursuant to provisions of this Tier 2 other than those of Section 1422 and this section. Section 1422 hereafter shall be construed and applied in accordance with this section as to each pension mentioned in this section.

Sec. 1426. Minimum Tier 2 Pensions and Other Cost of Living Adjustments.

(a) **Minimum Tier 2 Pensions.** Each pension granted pursuant to this Tier 2, regardless of the type of the pension, which became or becomes effective prior to July 1, 1971 and which, as of June 30, 1971, is in a monthly amount of less than \$350 shall be increased, effective July 1, 1971, pursuant to the provisions of subsection (b) and subsection (c) of this section, and shall, if such increase results in a monthly pension amount which is less than \$350, be increased to provide for a monthly minimum pension of three hundred fifty dollars (\$350). Each pension granted pursuant to this Tier 2, regardless of the type of the pension, which becomes effective on or subsequent to July 1, 1971 shall be in a monthly amount not less than the minimum monthly pension amount provided, as of the effective date of the pension, by this subsection of this section. The monthly amount of each such pension never shall be reduced, by reason of the provisions of Section 1422, Section 1424 or subsection (c) of this section, to a monthly amount less than the minimum monthly pension amount provided by this subsection.

(b) **Additional Cost of Living Adjustments.** The monthly amount of pension of each Beneficiary which, prior to the effective date of this section, had been increased by reason of a cost of living adjustment thereof pursuant to Section 1422 or Section 1424 shall be increased, as of July 1, 1971, by that portion of the percentage of the annual increase in the cost of living, as had been determined by the Board pursuant to Section 1422 which was in excess of 2% but not in excess of 3% for each year the monthly amount of such pension had been increased.

(c) **Adjustment for Certain Pensions.** The monthly amount of pension of each Beneficiary who heretofore did qualify or hereafter shall qualify for a cost of living adjustment thereof pursuant to Section 1422 or Section 1424 and the monthly amount of pension of each Beneficiary which shall be the minimum monthly pension amount provided by subsection (a) of this section, hereafter shall be increased or decreased, as of the dates provided therefor by Section 1422, by the percentage of the annual increase or decrease in the cost of living as hereafter shall be determined by the Board pursuant to Section 1422.

(d) **Applicability of this Section.** The provisions of Sections 1408, 1412, 1414, 1422 and 1424 hereafter shall be construed and applied in accordance with the provisions of this section.

(e) **Savings Clause.** Should any provisions of this section at any time be held to be invalid, in their application to certain persons or periods of time such invalidity shall not affect the validity of any provisions as to other persons entitled to benefits hereunder or the applicability as to other periods of time.

Sec. 1428. Authority of Council to Establish Certain Benefits by Ordinance.

(a) **Purpose of this Section.** It is the purpose of this section to enable the Council to provide by ordinance a program or programs whereby persons receiving pensions pursuant to the provisions of this Tier 2 may become eligible to have subsidy payments made on their behalf for health insurance, accident insurance, life insurance or health care plan coverage or coverage

for any combination of such programs as determined by the Council and subject to such conditions of entitlement as may be set forth in any ordinance adopted in accordance with the provisions of this section.

(b) **Mode of Adoption of Ordinance.** Ordinances adopted pursuant to this section must be approved by not less than two-thirds of the membership of the Council, subject to the veto of the Mayor and readoption by the Council by three-fourths of the membership of the Council. No such ordinance may be finally adopted by the Council until the expiration of at least thirty days after its first presentation to the Council, nor until after a public hearing has been held thereon. Any ordinance adopted pursuant to this section shall go into effect upon its publication, but the terms of such ordinance, or portions thereof, may be operative at a later date or dates.

(c) **Limitations on Council's Authority.** An ordinance adopted pursuant to this section may not provide for subsidy payments for any individual, the total amount of which, including subsidy payments from a City fund or funds other than those created under Section 1416, would be in excess of the maximum available subsidy payment for beneficiaries under the provisions of any ordinance adopted pursuant to the authority of Section 1168 of the Charter, nor may such subsidy payments be in excess of any amounts allowed active members of the Tier 2 System.

(d) **Administration of Subsidy Program.** Any subsidy program adopted by ordinance pursuant to this section shall be administered by the Board. In furtherance thereof, the Board shall have the authority to contract for suitable programs as hereinabove defined in subsection (a) hereof, to be made available to retired members or other beneficiaries, and shall have the power to adopt such rules as it deems necessary to administer such programs. Notwithstanding the foregoing provisions, the Board may authorize the Personnel Department to administer any program or part thereof established by ordinance pursuant to the provisions of this section, provided however, that the Board shall reimburse the General Fund of the City for all necessary expenses incurred by the Personnel Department as a result thereof.

(e) **Adjustment of Subsidy Amount.** The Board, in its discretion, may by resolution increase or decrease the amount of subsidy payments to reflect changes in subsidies provided for active members, or to offset any increases or decreases in the level of benefits referred to in subsection (a) of this section or the cost thereof as a result of changes in existing benefits or the addition of newly created benefits by federal or state funded programs.

Sec. 1430. Compliance with Certain Internal Revenue Code Provisions.

(a) **Election.** With the enactment of this section an election has been made as authorized under the provisions of Section 415(b)(10)(C) of the Internal Revenue Code to be bound by the limitations of Section 415 of the Code subject to the provisions of Section 415(b) and (B), thereof.

(b) **Automatic Repeal.** If any of the provisions of Section 415 of the Internal Revenue Code should be repealed, the provisions of this section shall be deemed repealed to the same extent.

Sec. 1432. Miscellaneous Provisions.

The provisions of this section shall be controlling if there were to be any other provision contained elsewhere in this Tier 2 which

is or could be construed to be contrary thereto, in conflict therewith or different therefrom.

(a) **Members Eligible to Service or Disability Pension.** Any System Member who shall believe that he is eligible to be retired pursuant to Section 1408 concerning Service Pensions and that he also is eligible to be retired pursuant to Section 1412 concerning Disability Pensions, shall have the right to file his written application to be retired pursuant to either one of the sections and the Board, if it were to determine that the contingencies provided in this Tier 2 for retirement pursuant to the particular section involved had happened or occurred as to such member, shall retire him in accordance with his written application.

(b) **Board Consideration of Conflicting Requests to Retire.** In the event that any System Member were to file his written application to be retired and a written request for him to be retired also were to be filed by or on behalf of the head of the department in which he is a Department Member, the Board shall not consider or make any determination with respect to such written request unless and until it first shall have considered such member's written application and shall have determined that he is not entitled to be retired in accordance therewith.

(c) **Service or Disability Pensions for Former Members.** Any former System Member who shall believe that he is eligible to be paid a pension pursuant to Section 1408 or pursuant to Section 1412, may file his written application for the payment to him of a pension pursuant to either one of said sections within the time prescribed for the filing thereof by any applicable provision of law and the Board, if it were to determine that the contingencies provided in this Tier 2 for the payment thereof had happened or occurred as to such former member prior to the date upon which he had ceased to be a System Member and if there is no legal bar or defense to the granting to him of such pension or to any judicial action or proceeding which could be brought by him with respect thereto, shall grant him the pension in accordance with his written application.

Sec. 1434. Overtime Work.

(a) **Time off With Pay.** Whenever a Tier 2 System Member, for overtime work, shall take a period of time off with pay:

- (1) a deduction for pension purposes shall be made from such pay but only in the same amount as that which would have been deducted from his Monthly Salary and additional monthly pay if such period had been one of regular work;
- (2) such pay shall be part of his Monthly Salary and additional monthly pay but only in the same amount as that which would have been his Monthly Salary and additional monthly pay if such period had been one of regular work; and

- (3) such period shall be part of his Years of Service.

(b) **Cash Payment.** Whenever a Tier 2 System Member, for overtime work, shall receive a cash payment:

- (1) a deduction for pension purposes shall not be made from such payment;
- (2) such payment shall not be part of his Monthly Salary and additional monthly pay; and
- (3) the period of overtime work for which he shall receive such payment shall not be part of his Years of Service except that any period of a Tier 2 System Member's overtime work, for which he shall not have taken time off with pay, shall be credited, by the Board, as part of his

Years of Service, upon his or his survivor's written request therefor, to the same extent as he would have been entitled to take time off with pay but only to the extent, and not in excess thereof, that he, while a Department Member, shall have had any period of absence from work without pay, but

such request shall be accompanied with payment of the amount which would have been deducted for pension purposes from his Monthly Salary and additional monthly pay if the period of overtime work, to the extent credited, had been one of regular work.

FIRE AND POLICE PENSION PLANS - TIER 3
(formerly Article XXXV, Plan 1)

Sec. 1500. Tier 3 Members.

(a) **Appointed Members.** Each person who shall be appointed as a Department Member on or after December 8, 1980 through June 30, 1997 shall become a Plan Member upon graduation by such person from training at the Police or Fire Academies or equivalent facility imparting basic training as a firefighter or police officer and maintained as such by the City of Los Angeles. A Chief of Police or a Fire Chief who is appointed to that position without having graduated from such facility may become a Member upon appointment. Upon becoming a Plan Member, a person may elect to purchase Years of Service credit for the period of such training in accordance with rules adopted by the Board.

(b) **Former Tier 1 & 2 Members.** A person formerly a system member under the provisions of Tier 1 or 2 of this Article whose membership had previously terminated by reason of resignation or discharge shall upon again being appointed as a Department Member become a Plan Member as of the effective date of such appointment. In the event such person did not receive a refund of contributions upon his or her termination as a System Member, then the definition of "Years of Service" elsewhere contained in this Tier 3 shall be controlling with respect to such person's entitlement to service credit; and further, such person need not make back contributions on account of such former service and does not have any right to have contributions formerly made by him or her under the provisions of Tier 1 or 2 refunded in the event he or she should subsequently terminate as a Plan Member. In the event such person received a refund of his or her contributions under the provisions of Tier 1 or 2 as a result of his or her termination, then such person's entitlement to Years of Service credit for the period of such former service shall be conditioned upon such person electing to repay and having paid to the Fire and Police Pension Plan – Tier 3 the amount of previously refunded contributions, with interest thereon and an amount calculated as interest which would have been earned between the date of such termination and the date of entry into service as a Plan Member in accordance with rules adopted by the Board. In the event such member does not elect to so repay, the term Years of Service as elsewhere used in this Tier 3 shall not include any periods prior to his or her becoming a Plan Member, notwithstanding the definitions contained in Section 1502(m) and (n).

(c) **Certain Former Tier 4 Members.** Each person who irrevocably elects in accordance with this subsection to become eligible for the service, vesting and contribution provisions of this Tier 3 shall become a Tier 3 Plan Member.

(1) **Election of Tier 4 Members to Become Tier 3 Members.** Any Department Member hired under Section 1600(a) during the period July 1, 1997 through December 31, 1997 who became a Tier 4 Plan Member in accordance with Section 1600 shall have the option to make an irrevocable election, in writing, to become eligible for the service, vesting and contribution provisions of Tier 3 and thereby become a Tier 3 Plan Member.

(2) **Election Period.** The election period shall commence no later than sixty (60) days following the operative date of

this subsection and shall remain in effect for six months from such date.

(3) **Tier 4 Members on Disability.** Any Tier 4 Plan Member hired during the period of July 1, 1997 through December 31, 1997 and who as a member of Tier 4 is receiving a disability pension pursuant to Section 1606 and who, thereafter, is restored to active duty as a Department Member after the end of the election period provided in subsection (c)(2), shall not be eligible to elect to become a Tier 3 Plan Member.

(4) **Members on Military Leave.** Persons who are not active members during the election period provided in subsection (c)(2) due to service in the armed forces shall have 90 days following their return to active duty or the expiration date of the election period, whichever is later, to make an election to become a Tier 3 Plan Member.

(5) **Release of Liability.** The Board shall have the authority to establish rules requiring a full and complete release from liability from members and their spouses or domestic partners upon the Plan Member's election to transfer from Tier 4 to Tier 3.

(d) **Paramedics and Civilian Ambulance Employees.** In addition to those Department Members described in subsection (a) of this section, paramedics or civilian ambulance employees shall become Plan Members upon the effective date of this subsection, except that persons employed as paramedic trainees shall become Plan Members only upon their certification, as provided by law, as mobile intensive care paramedics or equivalent. Upon certification, Plan Members may elect to purchase Years of Service credit for the period of such training in accordance with rules to be adopted by the Board.

If such a Plan Member had periods of membership in the Los Angeles City Employees' Retirement System while he or she was a paramedic or civilian ambulance employee, such Plan Member shall be entitled to elect to acquire Years of Service credit for such periods of membership in the Los Angeles City Employees' Retirement System. Upon such election his or her contributions, plus interest credited thereon, and his or her City service credit shall be transferred to the Fire and Police Pension Plan – Tier 3 in accordance with rules to be adopted by the Board.

(e) **Purchase of Credit by Surviving Spouse.** A surviving spouse of a Plan Member may complete the purchase of Years of Service credit elected by the Plan Member.

(f) **Prohibition of Double Benefits.** No Plan Member may receive double benefits by receiving credit for Years of Service for the same periods of City service from the Los Angeles City Employees' Retirement System and under the provisions of this Tier 3. Further, no Plan Member may transfer credit received from the Los Angeles City Employees' Retirement System while employed in a capacity other than paramedic or civilian ambulance employee.

(g) **Transfer of Released Liability.** Upon the election by a Plan Member to acquire Years of Service credit, the released liability of the Los Angeles City Employees' Retirement System shall be transferred to the Fire and Police Pension Plan – Tier 3. For the purposes of this subsection, the phrase Released Liability

means the City's share of the actuarially determined present value of benefits under the Los Angeles City Employees' Retirement System as of the date of transfer.

Sec. 1502. Definitions.

In addition to the words and phrases defined in the Fire and Police Pension Plans General Provisions in this Part 3, and for the purposes of this Tier 3, the following words or phrases shall have the meaning ascribed to them in this section, unless a different meaning is clearly indicated in the context.

(a) **Member of the Fire Department.** Member of the Fire Department means the Fire Chief and a person duly and regularly appointed in the Fire Department, under civil service rules and regulations or provisions of the Charter, or both, governing the making of original regular and permanent appointments which require the serving of probationary periods but not of original emergency or temporary appointments, to perform duties as a firefighter or as a paramedic or civilian ambulance employee for the City, under whatever designation such person may be described in any salary or departmental ordinance providing salaries for the members of the department, but such person shall be a member of the department only until his or her status as such shall be terminated by reason of retirement, resignation or discharge or for any other reason.

(b) **Member of the Police Department.** Member of the Police Department means the Chief of Police and a person duly and regularly appointed in the Police Department, under civil service rules and regulations or provisions of the Charter, or both, governing the making of original regular and permanent appointments which require the serving of probationary periods but not of original emergency or temporary appointments therein, and sworn in, as provided by law, to perform duties as a police officer for the City, under whatever designation such person may be described in any salary or departmental ordinance providing salaries for the members of the department, but such person shall be a member of the department only until his or her status as such shall be terminated by reason of his or her retirement, resignation or discharge or for any other reason.

(c) **Plan Member.** Plan Member means a person who is a Department Member and whose pension rights and benefits are governed by this Tier 3. Status as a Plan Member is limited by the provisions of Section 1500.

(d) **Qualified Surviving Spouse.** Qualified Surviving Spouse means a person who is the widow or widower of a deceased Plan Member or Retired Plan Member and who has been married:

- (1) to the Plan Member for at least one year prior to the date of his or her nonservice-connected death while a Plan Member, or
- (2) to the Plan Member as of the date of his or her service-connected death while a Plan Member, or
- (3) to the Retired Plan Member for at least one year prior to the effective date of his or her retirement upon a service pension or upon a nonservice-connected disability pension pursuant, respectively, to Section 1504 or Section 1506(b), or
- (4) to the Retired Plan Member as of the effective date of his or her retirement upon a service-connected disability pension pursuant to Section 1506(a).

(e) **Minor Child.** Minor Child means a person who is a child or an adopted child of a deceased Plan Member or a Retired Plan

Member, but such person shall be a Minor Child only until such person shall attain the age of 18 years or shall marry, whichever shall be earlier.

A person may further qualify for the benefits provided for a Minor Child under the provisions of this article until he or she reaches the age of 22 years if such person is enrolled in school on a full-time basis as determined by the Board but such person's marriage terminates entitlement to the benefits of a Minor Child.

(f) **Dependent Child.** Dependent Child means a person who is a child of a deceased Plan Member or a deceased Retired Plan Member, who is not married and who, while under the age of 21 years, had become disabled, either prior or after the date of death of such Plan Member or Retired Plan Member, from earning a livelihood for any cause or reason whatsoever, but such person shall be a Dependent Child only until he or she shall cease to be disabled from earning a livelihood. Should disability cease before the age of 22 years, the limitations set forth in subsection (e) shall be applicable.

(g) **Dependent Parent.** Dependent Parent means a person who is a parent of a deceased Plan Member or a deceased Retired Plan Member to or for whom such deceased Plan Member or deceased Retired Plan Member, during at least one year immediately preceding his or her death, contributed one-half or more of such Dependent Parent's necessary living expenses and who is unable to pay such expenses without the receipt of a pension, but such person shall be a Dependent Parent only until he or she shall be able to pay his or her necessary living expenses.

(h) **Length of Service Pay.** Length of Service Pay means any additional gross monthly pay which, by reason of length of service, shall be provided by ordinance.

(i) **Special Pay.** Special Pay means any additional gross monthly pay which, by reason of assignment to perform special duties other than hazardous duties, shall be provided by ordinance.

(j) **Hazard Pay.** Hazard Pay means any additional gross monthly pay which, by reason of assignment to perform helicopter duties, two-wheel motorcycle duties or any other hazardous duties shall be provided by ordinance.

(k) **Assignment Pay.** Assignment Pay means any additional gross monthly pay which, by reason of assignment to perform special duties or hazardous duties, in a higher class, position, grade, code or other title than the lowest thereof within the Plan Member's permanent rank, shall be provided therefor by ordinance.

(l) **Year.** Year means a period of 12 months or, in aggregating partial years for purposes of determining Years of Service, means 365 days.

(m) **Years of Service.** Years of Service means and includes only those periods during or for which the Plan Member was a Department Member of the Fire Department or of the Police Department, or of both and whether prior to or after his or her becoming a Plan Member and subject to the limitations contained in Section 1500 of this Tier 3:

- (1) did or shall receive salary, whether in full or reduced amounts thereof;
- (2) did or shall receive either a service-connected disability pension or a nonservice-connected disability pension under any Tier of the Fire and Police Pension Plans if he or she was or shall be restored to active duty as a Department

Member and did or shall perform his or her duties as such for at least one year prior to again retiring or being retired pursuant to this Tier 3, which year shall not include any time off from work by reason of any injury or illness which had been caused by or contributed to by any injury or illness which had been sustained or suffered by him or her prior to such restoration. The restored Plan Member, upon completing one Year of Service following restoration, shall be eligible for such credit only to the extent that the length of service following restoration matches the period the disability pension was received; but upon completing three years of restored service, the restored Plan Member is eligible for credit for the entire period the disability pension was received; and provided further that a period during which a Plan Member was on a nonservice-connected disability pension may only be counted toward his or her Years of Service if the Plan Member makes contributions therefor at the rate provided in Section 1514 of this Tier 3 in accordance with the rules to be adopted by the Board;

- (3) is or shall become entitled, under any provision of general law or ordinance of the City, to credit toward retirement for periods of military service or military leave;
- (4) did or shall receive Workers' Compensation benefits for temporary disability as provided by general law on account of any injury or illness arising out of and in the course of employment, but such period shall be made a part of the Plan Member's Years of Service only if the Plan Member has made contributions to the Fire and Police Pension Plan in the manner prescribed by Board rule;
- (5) is or shall become entitled pursuant to any ordinance of the City providing compensation for injury on duty; and
- (6) had served as a member of the Fire and Police Pension System - Tiers 1 or 2 of this Article, without having become eligible to service retirement benefits but such prior service as a member under provisions of Tiers 1 or 2 does not entitle the Plan Member to a refund of contributions made on account of such previous service.

A Plan Member who has previously been a Plan Member and who has ceased to be such by virtue of his or her resignation or discharge and who subsequently again becomes a Plan Member, shall be entitled to service credit only if he or she has first redeposited with interest, any Plan Member contributions previously withdrawn by him or her, in the manner provided by the Board.

(n) **Partial Year of Service.** Partial Year of Service means any period mentioned in subsection (m) of this section which is less than 12 months.

Any such Partial Year of Service shall be calculated from the end of the Plan Member's last completed Year of Service to the end of the payroll period immediately prior to the date of his or her retirement and shall be counted as part of a Plan Member's Years of Service for his or her retirement upon a service pension hereafter granted or for a pension hereafter granted to his or her Qualified Surviving Spouse, Minor Child or children, Dependent Child or children or Dependent Parent or parents if he or she hereafter shall die while upon a service pension hereafter granted or while eligible for a service pension.

(o) **Final Average Salary.** Final Average Salary means an amount equivalent to a monthly average of salary actually received during any 12 consecutive months of service as a Plan Member as designated by the Plan Member. In the absence of such designation, the last 12 consecutive months preceding the date upon which retirement would become effective shall be used as the basis for the calculation of Final Average Salary.

For Plan Members employed as paramedics or civilian ambulance employees who have formerly been members of the Los Angeles City Employees' Retirement System, and who, pursuant to the provisions of Section 1500 of this Tier 3 have become Plan Members, the determination of Final Average Salary shall include periods of City service for which such Plan Members have elected to acquire Years of Service credit by transfer of their contributions from the Los Angeles City Employees' Retirement System to the Fire and Police Pension Plan - Tier 3. If a Plan Member should die before having made such election, his or her surviving spouse may make the election in place of the Plan Member.

For the purposes of determining Final Average Salary periods during which the Plan Member receives less than full salary on account of injury or illness, pursuant to any applicable ordinance of the City, shall be included in the calculation of Final Average Salary based upon the salary, including any Length of Service Pay, Special Pay, Assignment Pay or Hazard Pay, the Plan Member would have received but for the injury or illness.

Included in the calculation of Final Average Salary shall be Length of Service Pay, Special Pay, Assignment Pay and Hazard Pay actually received during the 12 consecutive months used to determine Final Average Salary. To the extent that Hazard Pay was not received during all or any part of the 12 consecutive months used to determine Final Average Salary, then it shall be included in the calculation of Final Average Salary only if the Plan Member retires at the same rank as that occupied by him or her at a time when Hazard Pay was received during a period or periods other than the 12 months used to determine Final Average Salary, and for each such completed 12 month period during which the Plan Member served at that rank and received Hazard Pay, he or she shall be entitled to have included in the Final Average Salary 10% of the Hazard Pay which would have been payable had the hazardous duty been performed during the period for which the Final Average Salary is calculated except the total amount includable in the Final Average Salary for Hazard Pay may not exceed 100% of the amount the Plan Member would have received had he or she been entitled to Hazard Pay during the entire 12 month period utilized in the calculation of Final Average Salary.

Overtime compensation or payments of money to the member not designated as salary by an ordinance of the City shall not be considered for purposes of calculating Final Average Salary.

Notwithstanding any of the foregoing, if a Retired Plan Member were to be restored to active duty as a Department Member and thereby again were to become a Plan Member and if he or she again were to retire or to be retired without having performed his or her duties for at least one year subsequent to such restoration, which year shall not include any time off from work by reason of any injury or illness which had been caused by or contributed to by any injury or illness which had been sustained or suffered by him or her prior to such restoration, the

Final Average Salary which shall be applicable to his or her later retirement shall be the Final Average Salary which had been applicable to his or her previous retirement.

Should a Plan Member not have completed 12 consecutive months of service as a Plan Member, then and in that event only shall the Final Average Salary be calculated as a monthly average of all consecutive calendar months completed, and, if the Plan Member has completed less than one month of total service as a Plan Member, the salary actually received shall be used to calculate its monthly equivalent.

The following provision shall be effective for Plan Members who retire on or after July 1, 2000 from the Fire Department while holding a rank no higher than Captain or from the Police Department holding a rank no higher than Lieutenant. If Hazard Pay was not received during all or any part of the 12 consecutive months used to determine Final Average Salary, then an amount equivalent to 10% of the Hazard Pay received at the time of the termination of the last assignment to hazardous duties for each year in the aggregate of the assignment to hazardous duties shall be added to the Final Average Salary, not to exceed 10 years in the aggregate. The total amount of Hazard Pay included in Final Average Salary may not exceed 100% of the amount the Plan Member would have received had the Plan Member been entitled to Hazard Pay during the entire 12 month period utilized in the calculation of Final Average Salary.

Sec. 1504. Service Retirement and Vesting.

(a) **Normal Retirement.** Starting at the age of 50 years, a Plan Member who shall have 10 or more Years of Service, shall be retired by order of the Board from further active duty as a Department Member either upon the filing of his or her written application or upon the filing of a written request by or on behalf of the head of the department in which he or she is a Department Member, if it shall be determined by the Board to be for the good of such department, other than for a cause or reason which would entitle such Plan Member to a disability pension pursuant to Section 1506, and the Board, if it shall so determine, shall state the cause or reason in its order retiring such Plan Member.

(b) **Service Pension Benefits for Terminated Employees.** A former Plan Member who became such because of termination of his or her employment for any reason other than death or retirement on account of disability pursuant to the provisions of Section 1506, and who has completed at least 10 Years of Service, may elect to leave his or her contributions in the Fire and Police Service Pension Fund. Upon reaching the age of 50 years, such former Plan Member shall be entitled to receive service retirement benefits in accordance with the formula hereinafter set forth. The election to leave member contributions in the fund shall be irrevocable and must be in writing, filed with the Board within three years from the date of such termination of employment. Upon the execution and filing of the same, the former Plan Member's individual account shall be credited with an amount equal to all of the regular interest which, had he or she otherwise been entitled to the same, would have been credited thereto between the date of such termination of employment and the date of the filing of such election and thereafter, regular interest shall, until he or she be paid a pension, be credited thereto in the same manner as Plan Members' individual accounts shall be credited. In the event that any such person should die before being paid a pension, the only benefit which shall be paid under

the provisions of this Tier 3 is the payment of his or her accumulated contributions, including interest credited thereto, to such persons as may be entitled thereto. Failure to file such an election within three years shall constitute an irrevocable decision not to take the service retirement benefits herein provided.

(c) **Physical Examination for Employees Age 70 and Over.** After a Plan Member has attained the age of 70 years, he or she shall annually submit to an examination by a regularly licensed, practicing physician selected by the head of his or her department who shall render a written report to such department and to the Board as to whether or not the Plan Member is physically and mentally fit to continue his or her duties as a Department Member. If the Plan Member is found by the Board not to be physically or mentally fit to so continue his or her duties, he or she shall be retired effective the first day of the calendar month next succeeding that month in which the physician's report is received by the Board.

(d) **Pension Amount.** A pension payable pursuant to the provisions of this section shall be paid monthly for life in an amount which shall be equal to 2% of Final Average Salary per Year of Service for up to 20 Years of Service; and for each additional year of service after 20 years, 3% of Final Average Salary per year; but the maximum percentage of Final Average Salary payable, regardless of length of service, shall be 70% of such Final Average Salary.

Sec. 1506. Disability Pensions.

(a) **Service-Connected Disability.** Upon the filing of his or her written application for a disability pension or upon the filing of a written request therefor by or on behalf of the head of the department in which he or she is a Department Member, any Plan Member whom the Board shall determine has become physically or mentally incapacitated by reason of injuries received or sickness caused by the discharge of the duties of such person as a Department Member, and who is incapable as a result thereof from performing his or her assigned duties, or those to which he or she would be assigned within the Plan Member's civil service classification if returned to duty, shall be retired by order of the Board from further active duty as a Department Member.

A Plan Member's incapacity is caused by the discharge of his or her duties if there is clear and convincing evidence that the discharge of the Plan Member's duties is the predominant cause of the incapacity.

A Plan Member retired under the provisions of this subsection shall be paid thereafter a monthly service-connected disability pension in an amount which shall be equal to the same percentage of the Plan Member's Final Average Salary as the Board shall determine, from time to time, to be the percentage of his or her disability. Such pension shall be in an amount of not less than 30% and not more than 90% of the Retired Plan Member's Final Average Salary, but in no case shall the pension be less than the equivalent of 2% of Final Average Salary for each Year of Service of the Retired Plan Member.

No Retired Plan Member, while retired pursuant to this subsection, ever shall be paid any pension pursuant to Section 1504 or subsection (b) of this section.

(b) **Nonservice-Connected Disability.** Upon the filing of his or her written application for disability pension by a Plan Member who shall have five Years of Service or more, or upon the filing of a written request with respect to such a Plan Member by or on

behalf of the head of the department in which he or she is a Department Member, any Plan Member whom the Board shall determine has become physically or mentally incapacitated by reason of injuries or sickness other than injuries received or sickness caused by the discharge of the duties of such person as a Department Member, and who is incapable as a result thereof from performing his or her assigned duties or those to which he or she would be assigned within the Plan Member's civil service classification if returned to duty, shall be retired by order of the Board from further active duty as a Department Member.

As a further condition of entitlement to such a pension, the Board shall also determine that such disability was not principally due to or caused by voluntary action of the Plan Member intended to entitle him or her to a nonservice-connected disability pension.

A Retired Plan Member, retired under the provisions of this subsection shall be paid thereafter a monthly nonservice-connected disability pension in an amount which shall be equal to the same percentage of the Retired Member's Final Average Salary as the Board shall determine, from time to time, to be the percentage of his or her disability; but such pension shall be in an amount of not less than 30% and not more than 50% of the Retired Plan Member's Final Average Salary.

No Retired Plan Member, while retired pursuant to this subsection, ever shall be paid any pension pursuant either to Section 1504 or to subsection (a) of this section.

(c) **Determination of Disability.** Upon the filing of any written application or request for a disability pension, as referred to in subsections (a) and (b) of this section, the Board: (1) shall cause the Plan Member to be examined by and a written report thereon rendered by at least three regular licensed and practicing physicians selected by it; (2) shall hold a hearing with respect to such application or request; (3) shall receive or hear such other evidence relating to or concerning the Plan Member's disability or claimed disability as may be presented to it. The Board shall have the power to hear and determine all matters pertaining to the granting and denying of any such application or request for a disability pension. The Board first shall determine whether or not the Plan Member is incapable of performing his or her assigned duties or those to which he or she would be assigned within the Plan Member's civil service classification if returned to duty. If the Board were to determine that he or she is not so incapable, it then shall be the duty of the Board to deny the application or request. If the Board were to determine that he or she is so incapable, it then shall determine, pursuant to the language used in subsections (a) and (b) of this section, whether his or her incapacity or disability is service-connected or nonservice-connected. The Board then shall determine the percentage of his or her incapacity or disability, within the limitations prescribed in subsections (a) and (b) of this section, and shall grant the application or request accordingly. If the Board were to determine that the disability is nonservice-connected, and that the incapacity or disability was principally due to or caused by voluntary action by the Plan Member intended to entitle him or her to a nonservice-connected disability pension, it then shall be the duty of the Board to deny the application or request. The Board upon its own motion or upon the written request of any Retired Plan Member, retired pursuant to subsections (a) or (b) of this section, shall have the power to consider new evidence pertaining to the case of any such Retired Plan Member and to increase or decrease

the percentage of his or her incapacity or disability within the limitations prescribed in subsections (a) or (b) of this section; but any such increase or decrease shall be based only upon injuries or sickness for which he or she was retired. In the case of any former Plan Member who became such by reason of his or her resignation or discharge as a Department Member, the Board, in order to grant any application filed by him or her for a disability pension, must also determine, in addition to all of the foregoing, that any existing incapacity or disability upon his or her part occurred prior to the termination of his or her active status as a Department Member and had been continuous up to the date of the Board's determinations.

The Board shall adopt by rule, within a reasonable time, a disability rating schedule to assist in standardizing disability pension awards.

(d) **Termination of Disability Pensions.** The pension of any Retired Plan Member, retired pursuant to subsections (a) or (b) of this section and whose active status as a Department Member had been terminated by reason of his or her retirement, shall cease when the incapacity or disability for which he or she had been retired shall cease and he or she either:

- (1) shall have been restored to active duty as a Department Member in the same permanent rank which he or she had held as of the date of retirement; or
- (2) shall have been ordered restored to active duty as a Department Member in such same permanent rank and shall have declined, refused or neglected to report therefor or to perform duties as such.

Any former Plan Member who has been retired for more than five years from the date of the Board's action by which he or she was retired may never be restored to active duty as a Department Member. The pension of any Retired Plan Member, retired pursuant to subsections (a) or (b) of this section and whose active status as a Department Member had been terminated by reason of his or her resignation or discharge as such, shall cease when the incapacity or disability for which he or she received a disability pension shall cease. The Board shall have the power to hear and determine upon its own motion all matters pertaining to the termination of any such pension.

After a Retired Plan Member, whose active status as a Department Member has been terminated by reason of his or her retirement, has been retired on a service-connected disability pension or on a nonservice-connected disability pension for five years, and has been found to be no longer disabled, the Board shall adjust such Retired Plan Member's pension to 30% of his or her Final Average Salary. The adjusted pension shall reflect such cost of living adjustments as would have occurred had the Retired Plan Member's pension originally been based on such adjusted percentage.

(e) **Periodic Medical Examinations.** Except in those instances in which the Board has determined that, due to the nature of the disability, no purpose would be served in having periodic medical examinations to determine whether or not a Retired Plan Member is still disabled, all Retired Plan Members on a disability pension shall undergo medical examinations at periodic intervals, as determined by the Board, for the first five years of their disability retirement. Retired Plan Members who receive service-connected disability pensions exceeding 30% of Final Average Salary and Plan Members who terminated City employment by reason of

resignation or discharge prior to being granted a disability retirement, shall thereafter undergo medical examinations as determined by the Board.

If a Retired Plan Member resides outside of the State of California, the Board shall have the authority to order medical examinations of Retired Plan Members at any place it may determine to be desirable and shall, if it is determined that it would impose hardship on the person to be examined to travel to such place, have the authority to defray the reasonable cost of any such travel required.

(f) **Assessing Cost for Missed Medical Appointments.** The Board shall have the authority to provide, by rule, for assessing the cost of medical appointments missed by disability pension applicants, or by Retired Plan Members on a disability pension, where such missed appointments were not caused by factors beyond the control of the Plan Member or Retired Plan Member.

(g) **Re-application After Denial of Disability Pension.** The Board shall establish reasonable rules governing the re-application by Plan Members for a disability pension where an application has been denied and a new application has been filed subsequently for the same or similar medical reasons as those which were the basis of a previously denied application.

(h) **Transfers Under Civil Service.** For a period of one year following the effective date of a Retired Plan Member's disability pension, such Retired Plan Member shall be eligible for status without examination under the provisions of Section 1014 of the Charter in civil service classifications other than those that would entitle him or her to membership in any of the Fire and Police Pension Plans established by this Article but the provisions of this subsection shall not apply to former Plan Members whose status as Department Members had terminated by reason of resignation or discharge.

(i) **Exclusion for Willful Conduct.** In making its determinations and findings relative to subsections (a), (b), and (c) of this section, the Board shall consider whether and to what extent the activity giving rise to the disability of a member of the Police Department was caused or aggravated by such member's willful misconduct. If the Board finds that the disability was caused or aggravated by such willful misconduct, the Board shall deny the Plan Member's application for a disability pension. The provisions of this subsection shall be applicable only to those Plan members who became members of the Police Department on or after July 6, 1992.

Sec. 1508. Survivorship Pensions.

(a) Pension for Qualified Surviving Spouse.

(1) *Plan Member's Service-Connected Death.* The Qualified Surviving Spouse of a Plan Member who shall die by reason of injuries received or sickness caused by the discharge of his or her duties while a Department Member, shall be paid for life a monthly pension in an amount which shall be equal to 75% of the deceased Plan Member's Final Average Salary.

For the purposes of the benefit provided in this subsection (a)(1), a Plan Member has died by reason of injuries received or sickness caused by the discharge of his or her duties if there is clear and convincing evidence that the discharge of the Plan Member's duties were the predominant cause of his or her death.

(2) *Plan Member's Nonservice-Connected Death.* The Qualified Surviving Spouse of a Plan Member who shall have five or more Years of Service and who shall die while a Department Member, by reason of injuries or sickness other than injuries received or sickness caused by the discharge of his or her duties, shall be paid for life a monthly pension in an amount which shall be equal to 30% of the deceased Plan Member's Final Average Salary, or, if the Plan Member, at the time of death, was then eligible to receive a pension on account of Years of Service, 80% of the amount of such service pension as the Plan Member at the time of his or her death would have been entitled to receive on account of Years of Service whichever is higher but the entitlement of a Qualified Surviving Spouse under the provisions of this subsection (a)(2) may not exceed 40% of the deceased Plan Member's Final Average Salary.

(3) *Retired Plan Member's Death While on a Service Pension.* The Qualified Surviving Spouse of a Retired Plan Member, who shall die while he or she is receiving a pension pursuant to Section 1504, shall be paid for life a monthly pension in an amount which shall be equal to 60% of the pension received by the deceased Retired Plan Member immediately preceding the date of his or her death. The benefit described in this subsection (a)(3) may be modified as provided in subsection (b) of this section.

(4) *Retired Plan Member's Death While on a Service-Connected Disability Pension.* The Qualified Surviving Spouse of a Retired Plan Member, who shall die while he or she is receiving a service-connected disability pension pursuant to Section 1506, shall be paid for life a monthly pension in an amount which shall be equal to 60% of the pension received by the deceased Retired Plan Member immediately preceding the date of his or her death, unless the death of the Retired Plan Member occurs within three years after the effective date of his or her pension and is due to service-connected causes, in which case, the qualified Surviving Spouse shall receive, or in a case where an option has been elected pursuant to subsection (b) of this section, may elect to receive, 75% of the Retired Member's Final Average Salary, as modified by the cost of living adjustments made pursuant to Section 1516 of this Tier 3 since the date of retirement of the Retired Plan Member. The benefit described in this subsection (a)(4) may be modified as provided in subsection (b) of this section.

(5) *Retired Plan Member's Death While on a Nonservice-Connected Disability Pension.* The Qualified Surviving Spouse of a Retired Plan Member, who shall die while he or she is receiving a nonservice-connected disability pension pursuant to Section 1506, shall be paid for life a monthly pension in an amount which shall be equal to 60% of the pension received by the deceased Retired Plan Member immediately preceding the date of his or her death. The benefit described in this subsection (a)(5) may be modified as provided in subsection (b) of this section.

(6) *Nonservice-Connected Death of Plan Member with Less than Five Years of Service.* In the event the Plan Member died of nonservice-connected causes before having completed five Years of Service, the Qualified Surviving

Spouse of the deceased Plan Member, or his or her Minor or Dependent Children if there is no Qualified Spouse, or his or her Dependent Parents if there is No Qualified Surviving Spouse and no Minor or Dependent Children, shall be entitled to the Basic Death Benefit described in subsection (a)(7) below.

- (7) **Basic Death Benefit and Election.** The Basic Death Benefit shall consist of: (1) the return of a deceased Plan Member's contributions to the Plan with accrued interest thereon; subject, however to the rights created by virtue of the Plan Member's designation of a beneficiary as otherwise provided in this Tier 3; and (2) if the deceased Plan Member had at least one Year of Service, the deceased Plan Member's Final Average Salary multiplied by the number of completed Years of Service, not to exceed six years; provided that said amount shall be paid in monthly installments of one-half of the deceased Plan Member's Final Average Salary.

A Qualified Surviving Spouse, or a guardian acting on behalf of the Minor or Dependent Children of a deceased Plan Member if there is no Qualified Surviving Spouse, or Dependent Parents if there is no Qualified Surviving Spouse and no Minor or Dependent Children entitled to a pension pursuant to any of the provisions of this section, where benefits are based upon the Plan Member's death in active service, may in lieu of the pension provided and before the first payment of such pension, elect to receive the Basic Death Benefit.

- (b) **Optional Pensions for Qualified Surviving Spouse.** At any time before the first payment of a service pension, a service-connected disability pension, or a nonservice-connected disability pension, the Plan Member may elect to receive, in lieu of his or her pension as provided in Section 1504 or Section 1506, the actuarial equivalent at that time of such pension and of the pension for the Qualified Surviving Spouse as provided in subsection (a) of this section, by electing an optional pension payable throughout the balance of his or her life, with the provision that upon his or her death such optional pension shall be continued to the Plan Member's Qualified Surviving Spouse in the proportional amount designated by the Plan Member at the time of election of the option provided by this section.

The amount of such optional pension shall be so calculated that the liability of the Fire and Police Pension Plan – Tier 3 at the date of retirement under the optional pension shall be equal to the liability of the Fire and Police Pension Plan at the same date under the pension awarded in accordance with the provisions of Section 1504 or Section 1506 and of the survivorship pension provided by subsection (a) of this section. For the purpose of this section, the liability of the Fire and Police Pension Plan – Tier 3 is defined as the present value, in accordance with tables adopted by the Board, of the pensions or optional pensions calculated by approved actuarial methods, and recommended by the Board's actuary. In determining the actuarial equivalent of the pension for a Qualified Surviving Spouse as provided pursuant to subsections (a)(3), (4), and (5) of this section, the equivalent of a 60% survivorship pension shall be used in all cases.

The optional amounts, calculated in accordance with the foregoing paragraph, shall provide a range of optional values such that the amount to be paid to the Qualified Surviving Spouse of

the Plan Member shall range from 60% to 100% of the pension payable to the Plan Member, varying by increments of 5%.

If a Retired Plan Member, previously retired on a disability pension pursuant to the provisions of Section 1506, should be reinstated to active duty upon termination of his or her disability, the election to receive the optional pension as herein provided, shall be deemed cancelled as of the effective date of such reinstatement.

A Retired Plan Member, previously retired on a disability pension pursuant to the provisions of Section 1506 and whose pension has subsequently been adjusted as provided for in Section 1506, shall have the right to cancel any option previously elected by him or her pursuant to the provisions of this subsection.

The Board shall by rule provide for a method in which the election to receive an optional pension shall be exercised.

(c) **Additional Pension Amounts.** Whenever any Plan Member or Retired Plan Member shall die and leave surviving him or her, in addition to a Qualified Surviving Spouse, a Minor Child or Children or a Dependent Child or Children of his or her marriage to the Qualified Surviving Spouse, then such Qualified Surviving Spouse, shall be paid an additional monthly pension in an amount which shall be equal to 25% of the pension he or she as a Qualified Surviving Spouse would be entitled to pursuant to the provisions of subsection (a) of this section while there is one Minor Child or Dependent Child, 40% while there are two Minor Children or Dependent Children or a combination thereof, and 50% while there are three or more Minor Children or Dependent Children or a combination, and such additional monthly pension shall be the exclusive property of such Qualified Surviving Spouse and not the property of any such Minor Child or Dependent Child. Whenever any Plan Member or Retired Plan Member shall die and leave surviving him or her in addition to a Qualified Surviving Spouse, a Minor Child or Children or a Dependent Child or Children of his or her marriage to a former spouse, then the guardian or guardians of the estate or estates of any such Minor Child or Children or Dependent Child or Children shall be paid a monthly pension in an amount which shall be equal to 25% of the pension the Qualified Surviving Spouse would be entitled to pursuant to the provisions of subsection (a) of this section while there is one Minor Child or Dependent Child, 40% while there are two Minor Children or Dependent Children or a combination, and 50% while there are three or more Minor Children or Dependent Children or a combination.

Whenever any Plan Member or Retired Plan Member shall die and leave surviving him or her, in addition to a Qualified Surviving Spouse, a Minor Child or Children or a Dependent Child or Children of his or her marriage to the Qualified Surviving Spouse and a Minor Child or Children or a Dependent Child or Children of his or her marriage to a former spouse, then a monthly pension shall be paid in an amount which shall be equal to 25% of the pension the Qualified Surviving Spouse would be entitled to pursuant to the provisions of subsection (a) of this section while there is one Minor Child or Dependent Child, 40% while there are two Minor Children or Dependent Children or a combination, and 50% while there are three or more Minor Children or Dependent Children or a combination. The amount of such monthly pension shall be divided by the number of Minor Children or Dependent Children and shall be adjusted accordingly whenever any Minor or Dependent Child shall cease to be such.

The Qualified Surviving Spouse shall be paid the portion of such monthly pension which shall be applicable to the number of his or her Minor Children or Dependent Children and the same shall be her or his exclusive property. The guardian or guardians of the estate or estates of the Minor Children or Dependent Children who are not those of the Qualified Surviving Spouse shall be paid the portion of such monthly pension which shall be applicable to such Minor Children or Dependent Children and the same shall be the exclusive property of such children.

The additional pension amounts provided in this subsection for persons other than a Qualified Surviving Spouse are to be calculated on the basis of the applicable Qualified Surviving Spouse pension provided pursuant to subsection (a) of this section, unmodified by any election that may previously have been made pursuant to the provisions of subsection (b) of this section.

Additional pension amounts are also subject to the limitation that the amount of any survivorship pension provided in this section, after the additional payments provided in this subsection are added thereto, may not exceed 100% of the Final Average Salary of the deceased Plan Member or 100% of the Final Average Salary of the Retired Plan Member, as modified by the cost of living adjustments made pursuant to Section 1516 of this Tier 3 since the date of retirement of the Retired Plan Member. In case of such excess, any additional pension amounts shall be reduced to a level where the total amount of pension is equal to such maximum.

(d) Reinstatement of Pension of Reinstated Qualified Surviving Spouse. Subject to Section 1208 of the General Provisions for Fire and Police Pension Plans, any Qualified Surviving Spouse, who shall marry and thereby cease to be a Qualified Surviving Spouse, shall be reinstated as a Qualified Surviving Spouse as of:

- (1) the date upon which a judgment or decree shall become final dissolving such marriage upon any ground or declaring a void or voidable marriage to have been null and void or voided but such date shall be within five years from the date of the marriage ceremony; or
- (2) the date upon which such marriage shall be dissolved by the death of the other party thereto but such date shall be within five years from the date of the marriage ceremony. Such reinstated Qualified Surviving Spouse shall be entitled to the reinstatement of his or her pension effective as of either such date, which shall be applicable, but shall not be entitled to the payment of any pension for the period prior to such applicable date and subsequent to the date of the marriage ceremony. The pension paid to any other persons entitled under the provisions of the Fire and Police Pension Plan – Tier 3 during the period of the marriage or purported marriage of such reinstated Qualified Surviving Spouse shall cease when his or her pension shall be reinstated, except as otherwise provided in subsection (c) of this section. However, should such reinstated Qualified Surviving Spouse thereafter be a party to another marriage ceremony, his or her pension shall cease and never again shall be reinstated regardless of whether such marriage ceremony shall result in a valid marriage or in a voidable or void marriage and whether or not the same legally shall be terminated.

(e) Pension for Minor or Dependent Children. Whenever any Plan Member or Retired Plan Member shall die without leaving a Qualified Surviving Spouse, the guardian of the estate of his or her Minor or Dependent Children shall be paid, until each such child shall cease to be a Minor or Dependent Child, a monthly pension equal to the pension a Qualified Surviving Spouse would have been eligible to receive pursuant to subsection (a) of this section had a Qualified Surviving Spouse survived such Member. Whenever any Plan Member or Retired Plan Member shall die leaving a Qualified Surviving Spouse who thereafter shall die or who thereafter shall cease to be a reinstated Qualified Surviving Spouse, the guardian of the estate of his or her Minor or Dependent Children shall be paid, until each such child shall cease to be a Minor or Dependent Child, a monthly pension equal to the pension a Qualified Surviving Spouse would have been eligible to receive pursuant to subsection (a) of this section. In any of the foregoing events and if there were to be more than one Minor or Dependent Child, an equal share of such monthly pension shall be paid for and on behalf of each such child to the guardian of his or her estate and shall be adjusted as each of them shall cease to be a Minor or Dependent Child in the manner set forth in subsection (c) of this section. If payments are made pursuant to this subsection (e), no additional pension amounts shall be paid pursuant to subsection (c) of this section.

(f) Pension for Dependent Parents. Whenever any Plan Member or Retired Plan Member shall die without leaving a Qualified Surviving Spouse or a Minor Dependent Child, a monthly pension shall be paid to such Dependent Parents or to the survivor of them until each such Dependent Parent shall cease to be such. Any Dependent Parent who shall cease to be such but who thereafter again shall become unable to pay his or her necessary living expenses without a pension shall be entitled to have his or her pension reinstated.

The total amount of a pension payable to the Dependent Parent or Parents shall be the same as that to which a Qualified Surviving Spouse would have been entitled pursuant to subsection (a) of this section.

(g) Determinations With Respect to Cause of Death and Dependency. The Board shall have the same power as that which has been given to it by Section 1506(c) and (d) in order to determine:

- (1) the fact whether a Plan Member's death was service-connected or nonservice-connected for the purposes of Section 1508(a)(1) and (2);
- (2) the fact of whether or not a child of a deceased Plan Member or Retired Plan Member is a Dependent Child; and
- (3) whether or not any parent of a deceased Plan Member or Retired Plan Member is a Dependent Parent.

The Board also shall have the power to determine, from time to time, the fact of whether or not a child continues to be a Dependent Child, the fact of whether or not a parent continues to be a Dependent Parent and the fact of whether or not a Dependent Parent who had ceased to be such thereafter shall have become entitled to have his or her pension reinstated.

(h) Medical Reports and Hearings. The power of the Board to determine the fact of whether a Plan Member's death was service-connected or nonservice-connected, as provided in subsection (g) of this section, hereafter may be exercised by it

upon the basis of a written report from one regularly licensed and practicing physician selected by it but the Board, in its discretion, may obtain such a report from more than one such physician. The determination hereinbefore referred to in this subsection may, at the option of the Board, be made without a hearing being held pursuant to the provisions of subsection (g) of this section.

(i) **Distribution of Contributions.** Whenever a Plan Member dies without leaving a person or persons entitled to receive a pension pursuant to the provisions of this section, then, and in that event, his or her contributions to the Plan, together with such interest as may have been credited to the Plan Member's individual account shall be paid to such person as he or she shall have nominated by written designation duly executed and filed with the Board. In the event there is no written designation of beneficiary, surviving spouse, children or parents, then the contributions shall be paid to the executor or administrator of the estate of such deceased Plan Member, or to any other person legally authorized to collect money due the decedent.

Sec. 1510. Tier 3 Pension Funds.

(a) **Creation of Funds.** Two entirely separate and distinct funds hereby are created and established for the payment of pension benefits pursuant to this Tier 3, for the payment of certain other benefits as may be authorized by ordinance pursuant to the enabling provisions of this Tier 3 and for the payment of the administrative expenses of the Fire and Police Pension Plan – Tier 3, one of which shall be known as the "Fire and Police Tier 3 Service Pension Fund" and the other of which shall be known as the "Fire and Police Tier 3 General Pension Fund."

(b) **Fire and Police Tier 3 Service Pension Fund.** The Fire and Police Tier 3 Service Pension Fund shall consist of:

- (1) deductions made pursuant to Section 1514, from the salaries of Plan Members;
- (2) all contributions and donations to the Fire Department or to the Police Department for services by any Plan Members, except amounts of money donated to provide for any medal or permanent competitive award;
- (3) all fines imposed upon Plan Members for violations of rules and regulations of the respective department in which they are Department Members;
- (4) proceeds from the sale of unclaimed property as determined by the Board; and
- (5) all interest, earnings and profits resulting from investments of such monies.

(c) **Fire and Police Tier 3 General Pension Fund.** The Fire and Police Tier 3 General Pension Fund shall consist of:

- (1) all money appropriated to the fund by the Council;
- (2) all interest, earnings and profits resulting from investment of such monies.

(d) **Use of Funds.** The monies in the Fire and Police Tier 3 Service Pension Fund shall be used, other than for the investment thereof, exclusively for the payment of service pensions granted pursuant to Section 1504 and for the refund of contributions as provided in this Tier 3. The monies in the Fire and Police Tier 3 General Pension Fund shall be used, other than for the investment thereof, exclusively for the payment of all pensions other than service pensions, such benefits as may be provided by ordinance adopted pursuant to the enabling provisions contained in this Tier

3 and of all administrative expenses of the Fire and Police Tier 3 Pension Plan.

(e) **Authorized Transfer Between Funds.** In the event that the monies in the Fire and Police Tier 3 Service Pension Fund should be insufficient, at any time, to pay all service pensions, then the Board shall have the power and authority to cause the Controller of the City to transfer to the fund sufficient monies therefor from the Fire and Police Tier 3 General Pension Fund. In no other event shall any of the money in either of the funds be commingled with any money in the other fund.

(f) **Benefits Shall be General Obligation of the City.** The obligation to pay benefits pursuant to this Tier 3 shall be a general obligation of the City.

Sec. 1512. Actuarial Determinations and Tier 3 Unfunded Liabilities.

(a) **Actuarial Standards.** The Fire and Police Pension Plan – Tier 3 shall be maintained on a reserve basis which, for the purposes of this Tier 3, shall mean one which provides for the accumulation and maintenance of the Fire and Police Tier 3 Service Pension Fund and the Fire and Police Tier 3 General Pension Fund which together will at all times be equal to the difference between the present value of the obligations assumed and the present value of the monies to be received for paying such obligations, where such present values are estimated in accordance with accepted actuarial methods and on the basis of an assumed rate of interest and the mathematical probabilities of the occurrence of such contingencies as affect both the payment of the assumed obligations and the receipt of monies with which they are to be paid in accordance with the provisions of Sections 1210(b)(3) and 1514.

(b) **Actuarial Valuations.** The Board shall secure an actuarial valuation showing the cost of maintaining the plan and funds on such reserve basis and, at intervals of not to exceed five years, shall cause to be made an actuarial investigation including, but not limited to, the mortality, service and salary experience of the Plan Members and other beneficiaries and shall further cause to be made annually an actuarial valuation of the assets and liabilities of the funds.

The Board, from time to time and with the advice of the investment counsel, shall establish such an assumed rate of interest for the purpose of actuarial valuations, as in its judgment seems proper in the light of the experience and prospective earnings on the investment of the funds.

(c) **Retention of Actuary.** The Board shall retain a competent consulting actuary for the purpose of making the necessary actuarial studies, reports, investigations and valuations and shall, with the advice of the actuary, adopt such actuarial assumptions as shall be necessary.

(d) **Accounting for Unrealized Profits and Losses.** With the advice of the consulting actuary and of the investment counsel, the Board, for the purpose of the actuarial valuations, may provide by rule for the manner and the extent to which any unrealized profits or losses in the equity type investments of the funds shall be taken into account.

(e) **Unfunded Liabilities.** The unfunded liabilities of the Fire and Police Pension Plan – Tier 3 shall be funded in accordance with the actuarial funding method adopted by the Board upon the advice of its consulting actuary. Any unfunded liabilities resulting from amendment of the provisions of this Tier 3 or by

ordinance as authorized by this Tier 3 shall be amortized over a 30 year period. Actuarial experience gains and losses shall be amortized over a 15 year period.

Sec. 1514. Member Contributions – Tier 3.

(a) **Contribution Amount.** Each Plan Member shall contribute to the Fire and Police Pension Plan – Tier 3 by salary deduction at the rate of 8% of the amount of his or her salary, except that further contributions to the Plan shall not be required from a Plan Member who has served as a Plan Member more than 30 years.

For purposes of determining the amount of the deduction, Salary shall mean those elements of a Plan Member's compensation which would be included in calculating Final Average Salary. The administrative head of the Fire Department or the Police Department shall cause to be shown on each and every payroll of such department a deduction of 8% of the amount of salary of each Plan Member whose name appears thereon.

(b) **Member Accounts.** The Board shall maintain an individual account of the contributions by or for each Plan Member, as hereinabove provided. Regular interest shall be credited to such individual accounts as of the last day of June and December of each year at such rate as the Board may deem proper in light of the Fire and Police Pension Plan's earnings, exclusive of profits and losses on principal heretofore or hereafter resulting from sales of securities. No such interest shall be credited at any other time or to the individual account of any person who is not a Plan Member but such interest shall be credited to the individual account of a Plan Member whose employment is terminated for any reason for any period of service between the next preceding last day of June or December and the end of the pay period preceding the date of such termination at the rate at which regular interest was last credited to Plan Members' individual accounts.

(c) **Payroll Deduction.** Each Plan Member shall be deemed to consent and agree to each deduction made as provided for herein and the payment of each payroll check to such Plan Member shall be a full and complete discharge and acquittance of all claims and demands whatever for the services rendered by each member during the period covered by such payroll, except such claims as such Plan Member has to the benefits or payments provided for in this Tier 3.

(d) **Election of Refund Forfeits Right to Benefits.** Plan Members or beneficiaries thereof who elect to receive a refund of contributions, forfeit the right to benefits provided in this Tier 3. After payment of any pension benefit has commenced, the Plan Member or beneficiaries forfeit the right to a refund of the Plan Member's contributions. Plan Members who return to active duty from a disability pension may not thereafter have their contributions refunded. A terminated Plan Member who had elected to have contributions returned, but who re-enters service and again becomes a Plan Member, shall have the privilege of regaining the prior service credit by repaying the amount of his or her previously refunded contributions and interest and an amount calculated as interest which would have been earned between the date of original termination of status as a Plan Member and the date of re-entry into service as a Department Member.

(e) **Assuring Full Member Contributions.** The Board shall have rule-making authority to insure that the Fire and Police Pension Plan – Tier 3 receives member contributions for all periods of credited service, except that the Board shall not have authority to require contributions for service credit for military

service and for periods while a Plan Member is receiving a disability pension, or full pay for Injury On Duty. Plan Members, however, may elect to make contributions for periods of Injury On Duty compensated at the rate provided by general law in order to acquire credit for Years of Service for such period. Such contributions shall be at the contribution rate herein provided and shall be based on the salary the Plan Member would have received if he or she had not occupied Injury On Duty status.

Sec. 1516. Cost of Living Adjustments.

(a) **Determination of Cost of Living Adjustments.** The Board, before May 1 of each year commencing with the year 1981, shall determine the percentage of the annual increase or decrease in the cost of living as of March 1 of that year from March 1 of the preceding year as shown by the Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics or such other index as the Federal Government may develop to replace the All Urban Consumers Index for the area in which the City is located. If any such index were not to reflect the cost of living as of a particular March 1, then the index for the closest preceding date shall be used.

(b) **Annual Cost of Living Adjustments.** Commencing as of July 1 of the year in which the Board shall determine the percentage of increase or decrease in the cost of living, the monthly amounts of all pensions granted pursuant to the provisions of this Tier 3, shall be increased or decreased by reason of such determined percentage of increase or decrease in the cost of living, not to exceed an increase or decrease of 3% in any given year. Pensions which became payable before July 1, but subsequent to the preceding July 1, will be adjusted on a prorated basis whereby one twelfth of the annual adjustment shall be applied for each completed month since such pension commenced. In no event shall pensions adjusted hereunder ever be decreased below the amount received by the Beneficiary when such pension first became payable to him or her.

(c) **Discretionary Cost of Living Adjustments.** To the extent that the annual cost of living adjustments provided by subsection (b) hereof are less than the annual change in the cost of living as determined in subsection (a) hereof, the Council may grant discretionary cost of living adjustments, in addition to the annual cost of living adjustments provided by subsection (b) hereof, subject to the following conditions and requirements:

- (1) *No More Than Every Three Years.* Discretionary adjustments may not be provided more frequently than once every three years, counting from the effective date of this section and, after a discretionary adjustment has once been made, counting from the date the last discretionary adjustment became effective.
- (2) *Limit of Adjustments.* Discretionary adjustments shall not exceed one-half of the difference between the percentage of the annual increases in the cost of living, as determined pursuant to the provisions of subsection (a) of this section, and the annual adjustments made pursuant to subsection (b) of this section for each of the preceding three years. Discretionary adjustments shall be allocated to each of the three years for which an adjustment is made.
- (3) *Pensions Eligible for Adjustment.* Discretionary adjustments herein provided shall be applied to pensions granted pursuant to Sections 1504, 1506 and 1508 subject to the following limitations: If a pension became payable

on or after the July 1 immediately preceding the effective date of such adjustment, it shall not be so adjusted; and any pension which shall have become payable at a time within the three year period (but prior to the immediately preceding July 1) shall be prorated on a monthly basis to the number of completed months for which the pension was received, provided that pensions paid pursuant to Section 1508(a)(3), (4) or (5), or Section 1508(c), (e) or (f), shall be adjusted by basing eligibility on the date upon which the Retired Plan Member's pension became effective.

- (4) *Report to Council Prior to Adoption by Ordinance.* Discretionary cost of living adjustments may be provided only by ordinance. Ordinances providing discretionary adjustments may not be finally adopted until the Council has first obtained and published a report from the actuary or actuaries of the Fire and Police Pension Plan – Tier 3 indicating the present value of the liabilities that will be created by the proposed discretionary adjustment. This report must identify the annual funding cost of amortizing this liability over a 30 year period utilizing the funding procedure adopted by the Board.
- (5) *Vote by Council.* Ordinances adopted pursuant to this subsection must be by not less than two-thirds of the membership of the Council, subject to the veto of the Mayor and re-adoption by the Council by not less than three-fourths of the membership of Council. No such ordinance may be finally adopted by the Council until the expiration of at least 30 days after its first presentation to the Council, nor until after a public hearing has been held thereon. Ordinances adopted pursuant to this subsection, shall be published no later than November 30 and shall become effective January 1.
- (6) *Prospective Application.* All adjustments provided in this subsection are to be applied prospectively only and shall not be understood to permit retroactive adjustments of pensions.

Sec. 1518. Provision of Certain Subsidy Payments by Ordinance.

(a) **Purpose of this Section.** It is the purpose of this section to enable the Council to provide by ordinance a program or programs whereby persons receiving pensions pursuant to the provisions of this Tier 3 may become eligible to have subsidy payments made on their behalf for health insurance, accident insurance, life insurance or health care plan coverage or coverage for any combination of such programs as determined by the Council and subject to such conditions of entitlement as may be set forth in any ordinance adopted in accordance with the provisions of this section.

(b) **Mode of Adoption of Ordinance.** Ordinances adopted pursuant to this section must be approved by not less than two-thirds of the membership of the Council, subject to the veto of the Mayor and readoption by the Council by three-fourths of the membership of the Council. No such ordinance may be finally adopted by the Council until the expiration of at least 30 days after its first presentation to the Council, nor until after a public hearing has been held thereon. Any ordinance adopted pursuant to this section shall go into effect upon its publication, but the terms

of such ordinance, or portions thereof, may be operative at a later date or dates.

(c) **Limitations on Council's Authority.** An ordinance adopted pursuant to this section may not provide for subsidy payments for any individual, the total amount of which, including subsidy payments from a City fund or funds other than those created under Section 1510, would be in excess of the maximum available subsidy payment for beneficiaries under the provisions of any ordinance adopted pursuant to the authority of Section 1168 of the Charter, nor may such subsidy payments be in excess of any amounts allowed active members of the Tier 3 System.

(d) **Administration of Subsidy Program.** Any subsidy program adopted by ordinance pursuant to this section shall be administered by the Board. In furtherance thereof, the Board shall have the authority to contract for suitable programs as defined in subsection (a), to be made available to retired members or other beneficiaries, and shall have the power to adopt such rules as it deems necessary to administer such programs. Notwithstanding the foregoing provisions, the Board may authorize the Personnel Department to administer any program or part thereof established by ordinance pursuant to the provisions of this section, but the Board shall reimburse the General Fund of the City of Los Angeles for all necessary expenses incurred by the Personnel Department in administering these programs.

(e) **Adjustment of Subsidy Amount.** The Board, in its discretion, may by resolution increase or decrease the amount of subsidy payments on the following conditions only: (1) to reflect changes in subsidies provided for active members or (2) to offset any increases or decreases in the level of benefits referred to in subsection (a) of this section or the cost thereof as a result of changes in existing benefits or the addition of newly created benefits by federal or state funded programs.

Sec. 1520. Compliance with Certain Internal Revenue Code Provisions.

(a) Notwithstanding any other provisions of this Tier 3, the benefits payable to any person who became a Plan Member prior to January 1, 1990, shall be subject to the greater of the following limitations:

- (1) The limitations set forth in Section 415 of the Internal Revenue Code; or
- (2) The accrued benefit of the Plan Member of the Fire and Police Pension Plan – Tier 3 (determined without regard to any amendment to the Plan made after October 14, 1987), as provided in Section 415(b)(10)(A) of the Internal Revenue Code.

(b) The benefits payable to any person who becomes a Plan Member on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code.

(c) The Council shall, by ordinance, provide such benefits as are necessary to preserve the level of benefits in effect prior to the effective date of this section.

(d) Should it be determined that the provisions of Charter Section 1508(a)(1) violate the limitations of Section 415 or the incidental death benefit provisions of the Internal Revenue Code, Section 1508(a)(1) shall be deemed inapplicable to the extent necessary to achieve compliance. The Council shall by ordinance, adopt such measures as are necessary to achieve compliance and to preserve the level of benefits in effect prior to the effective date of this section.

(e) Ordinances adopted pursuant to this section shall be adopted in the same manner as those authorized by Charter Section 1518, except however any Ordinances adopted shall be effective upon publication.

(f) If any of the provisions of Section 415 of the Internal Revenue Code should be repealed, the provisions of this section shall be deemed repealed to the same extent.

(g) All benefits provided pursuant to any ordinance adopted under the provisions of subsection (e) shall be administered by the Board. A separate and distinct fund or funds shall be created by the Board as required to administer such benefits. Such fund or funds shall not contain employee contributions. The Board shall also determine the manner of funding any liabilities incurred as a result of ordinances adopted pursuant to this section.

Sec. 1522. Compensation Limits.

(a) For members hired on or after July 1, 1996, the Final Average Salary taken into account to determine the benefits provided by Tier 3 of this Article shall not exceed the annual limit set forth in Section 401(a)(17) of the Internal Revenue Code and regulations thereunder for any Plan Year. This annual compensation limitation shall be adjusted automatically for each Plan Year to the amount prescribed by the Secretary of the Treasury or, said Secretary's delegate. For purposes of this section, the family aggregation rules of Section 414(q)(6) of the Internal Revenue Code shall apply; provided that "family" shall include only the Member's spouse and lineal descendants who have not yet attained age 19 by the last day of the Plan Year.

(b) If any of the limitations of Section 401(a)(17) or Section 414(q)(6) should be repealed, the provisions of this section shall be deemed repealed to the same extent.

Sec. 1524. Council Authority to Maintain Tax-Qualified Status of Plan.

The Council may, by ordinance, amend the Fire and Police Pension Plan – Tier 3 to incorporate provisions of federal laws and regulations required to maintain the tax-qualified status of the Fire and Police Pension Plan – Tier 3. The Council also may enact ordinances to modify or repeal such provisions. Ordinances adopted pursuant to this section shall be adopted in accordance with Charter Section 1518. It is the intent of this section to facilitate compliance with the provisions of federal laws affecting the Fire and Police Pension Plan – Tier 3.

Sec. 1526. Miscellaneous Provisions.

Notwithstanding any other provision of this Tier 3, the provisions of this section shall be controlling to the extent there is a conflict with another provision.

(a) **Service or Disability Pensions for Former Plan Members.** Any former Plan Member who shall believe that he or she is eligible to be paid a pension pursuant to Section 1504 or 1506 of this Tier 3, may file his or her written application for the payment of a pension pursuant to either one of the sections within the time prescribed for the filing thereof by any applicable provision of law, and the Board, if it were to determine that the contingencies provided in this Tier 3 for the payment thereof had happened or occurred as to such former Plan Member and if there is no legal bar or defense to the granting to him or her of such pension or to any judicial action or proceeding which could be brought by him or her with respect thereto, shall grant him or her the pension in accordance with his or her written application.

(b) **Adoption of Board Rules to Comply with Federal or State Law.** If at any time after December 8, 1980, federal or state law should become preemptive or controlling with respect to the provisions of this Tier 3, the Board shall have the power to adopt such rules as may be necessary to comply with such federal or state law. Such rules shall be adopted upon the advice and with the concurrence of the City Attorney.

(c) **Payroll Deductions and Years of Service Credit for Overtime.** Whenever a Plan Member, for overtime work, shall take a period of time off with pay:

(1) a deduction for pension purposes shall be made from such pay but only in the same amount as that which would have been deducted from his or her salary if such period had been one of regular work; and

(2) such period shall be part of his or her Years of Service.

Whenever a Plan Member, for overtime work, shall receive a cash payment:

(1) a deduction for pension purposes shall not be made from such payment; and

(2) the period of overtime work for which he or she shall receive such payment shall not be part of his or her Years of Service.

(d) **Coordination with Deferred Compensation Plan.** In the event the City establishes a deferred compensation system applicable to the members of the Fire and Police Pension Plan – Tier 3, the Board shall prescribe rates of contributions and benefits so that the interest of the City in protecting the Plan and the interest of the Plan Members in pension benefits are protected when compared with contributions and benefits which would have been received had deferred compensation not been instituted.

Sec. 1528. Social Security Participation.

(a) **Implementation Procedure for Social Security Participation.** Should Social Security participation be mandated or made available to Plan Members by Federal legislation amending the Social Security Act or by action taken by the City or by Plan Members as provided by law, the following provisions shall govern the manner in which such participation by Plan Members is to be implemented and the limitations hereinafter set forth shall be controlling unless Federal law is contrary to these provisions, is in conflict therewith and is clearly intended to be preemptive. Should applicable provisions of Federal law in any respect differ from the provisions contained in this section and should they be determined to be preemptive as to any part thereof, then and in that event, those provisions of this section not affected by such Federal law shall remain in full force and effect.

(b) **Council Authority to Coordinate Benefits and Contributions.** As to the rights and entitlement to benefits of Plan Members participating in such Social Security coverage, the Council shall have the power and authority, subject to the veto of the Mayor, to adopt ordinances modifying the benefits and conditions of entitlement provided in this Tier 3, including adjustments of Plan Member contributions to the Fire and Police Pension Plan – Tier 3 as hereinafter more specifically provided and subject to the limitations stated herein.

(c) **Supermajority Vote Required.** Ordinances adopted pursuant to this section must be approved by not less than two-thirds of the membership of the Council, subject to the veto of the Mayor and re-adoption by the Council by a vote of not less than

three-fourths of the membership of Council. No such ordinance may be finally adopted by the Council until the expiration of at least 30 days after its first presentation to the Council, nor until after a public hearing has been held thereon. Any ordinance adopted pursuant to this section shall go into effect upon publication.

(d) **Integration of Social Security and Pension Plan.** Any participation in Social Security coverage shall be by integration with the benefits provided by this Tier 3 and shall not be in addition to the benefits provided in the Fire and Police Pension Plan – Tier 3. Integration is to be defined in harmony with the provisions of the Social Security Act and must be in substantial

compliance with the rules and regulations governing said Act. Benefits provided by an integrated system must be at least equal to the benefits offered by the Fire and Police Pension Plan – Tier 3 prior to such integration. The level of integration may be periodically adjusted by the Mayor and Council to ensure an adequate level of integration.

(e) **Minimum Plan Member Contributions.** Plan Members participating in Social Security shall have their contributions to the Fire and Police Pension Plan – Tier 3 reduced but Plan Members must contribute at least 2% of salaries to the integrated Fire and Police Pension Plan – Tier 3.

FIRE AND POLICE PENSION PLANS - TIER 4
(formerly Article XXXV, Plan 2)

Sec. 1600. Tier 4 Members.

(a) **Appointed Members.** Each person who shall be appointed as a Department Member on or after July 1, 1997 shall become a Tier 4 Plan Member upon graduation by such person from training at the Police or Fire Academies or equivalent facility imparting basic training as a firefighter or police officer and maintained as such by the City of Los Angeles. A Chief of Police or a Fire Chief who is appointed to that position without having graduated from such facility may become a Member upon appointment. Upon becoming a Tier 4 Plan Member, a person may elect to purchase Years of Service credit for the period of such training in accordance with rules adopted by the Board.

(b) **Active Members of Tier 3.** Any active Department Member hired prior to July 1, 1997 who made an irrevocable election, in writing, during the period July 1, 1997 through June 30, 1998 to become eligible for the service retirement benefits provided under this Tier 4 shall become a Tier 4 Member.

(c) **Former Members.** Any Tier 1, 2 or 3 Member who ceased to be such as a result of resignation or discharge and who subsequently again becomes a Plan Member shall become a Tier 4 Member upon reappointment as a Department Member. However, a former Plan Member who previously had ten years of service under the provisions of Tier 3 who again becomes a Plan Member shall have the option of becoming a Tier 4 member only if both of the following conditions are met:

- (1) the former Plan Member did not make an election to take a deferred pension under the provisions of Tier 3, and
- (2) three years have not elapsed since the effective date of the former Plan Member's resignation or discharge as a Plan Member.

Upon the return to duty, such Plan Member shall have 90 days to make an election to become a Tier 4 Member.

(d) **Tier 3 Members On Disability.** Any Plan Member who shall be receiving a disability pension pursuant to Tier 3 and who is restored to active duty as a Department Member on or after July 1, 1998 shall not be eligible to elect to become a Member of Tier 4, unless such Department Member was originally hired in under the provisions of this Tier 4.

(e) **Members on Military Leave.** Persons who are not active members during the election period due to service in the armed forces shall have 90 days following their return to active duty or June 30, 1998, whichever is later, to make an election to become a Tier 4 Member.

(f) **Former Tier 1 & 2 Members.** A person formerly a System Member under the provisions of Tier 1 or 2 of this Article whose membership had previously terminated by reason of resignation or discharge shall upon again being appointed as a Department Member become a Plan Member as of the effective date of such appointment. In the event such person did not receive a refund of contributions upon his or her termination as a System Member, then the definition of "Years of Service" elsewhere contained in this Tier 4 shall be controlling with respect to such person's entitlement to service credit; and further, such person need not make back contributions on account of such former service and does not have any right to have contributions formerly made by him or her under the provisions of Tier 1 or 2 refunded in the event he or she should subsequently terminate as a Plan Member.

In the event such person received a refund of his or her contributions under the provisions of Tier 1 or 2 as a result of his or her termination, then such person's entitlement to Years of Service credit for the period of such former service shall be conditioned upon such person electing to repay and having paid to the Fire and Police Pension Plan the amount of previously refunded contributions, with interest thereon and an amount calculated as interest which would have been earned between the date of such termination and the date of entry into service as a Plan Member in accordance with rules adopted by the Board. In the event such member does not elect to so repay, the term Years of Service as elsewhere used in this Tier 4 shall not include any periods prior to his or her becoming a Plan Member, notwithstanding the definitions contained in Section 1602(m) and (n).

(g) **Paramedics and Civilian Ambulance Employees.** In addition to those Department Members described in subsection (a) of this section, paramedics or civilian ambulance employees shall become Plan Members upon the effective date of this subsection, except that persons employed as paramedic trainees shall become Plan Members only upon their certification, as provided by law, as mobile intensive care paramedics or equivalent. Upon certification Plan Members may elect to purchase Years of Service credit for the period of such training in accordance with rules to be adopted by the Board.

If such a Plan Member had periods of membership in the Los Angeles City Employees' Retirement System while he or she was a paramedic or civilian ambulance employee, such Plan Member shall be entitled to elect to acquire Years of Service credit for such periods of membership in the Los Angeles City Employees' Retirement System. Upon such election his or her contributions, plus interest credited thereon, and his or her City service credit shall be transferred to the Fire and Police Pension Plan – Tier 4 in accordance with rules to be adopted by the Board.

(h) **Purchase of Credit by Surviving Spouse.** A surviving spouse of a Plan Member may complete the purchase of Years of Service credit elected by the Plan Member.

(i) **Prohibition of Double Benefits.** No Plan Member may receive double benefits by receiving credit for Years of Service for the same periods of City service from the Los Angeles City Employees' Retirement System and under the provisions of this Tier 4. Further, no Plan Member may transfer credit received from the Los Angeles City Employees' Retirement System while employed in a capacity other than paramedic or civilian ambulance employee.

(j) **Transfer of Released Liability.** Upon the election by a Plan Member to acquire Years of Service credit, the released liability of the Los Angeles City Employees' Retirement System shall be transferred to the Fire and Police Pension Plan – Tier 4. For the purposes of this subsection, the phrase Released Liability means the City's share of the actuarially determined present value of benefits under the Los Angeles City Employees' Retirement System as of the date of transfer.

(k) **No Benefits Under Other Tiers.** Department Members as defined in this section shall be identified as Tier 4 Members. Tier 4 Members shall not be entitled to a service retirement under any

other Tier of this Fire and Police Pensions Plan for the same periods of service.

(l) **Release of Liability.** The Board shall have the authority to establish rules requiring a full and complete release from liability from members and their spouses upon the Plan Member's election to transfer to Tier 4.

Sec. 1602. Definitions.

In addition to the words and phrases defined in the Fire and Police Pension Plans General Provisions in Part 3, and for the purposes of this Tier 4, the following words or phrases shall have the meaning ascribed to them in this section, unless a different meaning is clearly indicated in the context.

(a) **Member of the Fire Department.** Member of the Fire Department means the Fire Chief and a person duly and regularly appointed in the Fire Department, under civil service rules and regulations or provisions of the Charter, or both, governing the making of original regular and permanent appointments which require the serving of probationary periods but not of original emergency or temporary appointments, to perform duties as a firefighter or as a paramedic or civilian ambulance employee for the City, under whatever designation such person may be described in any salary or departmental ordinance providing salaries for the members of the department, but such person shall be a member of the department only until his or her status as such shall be terminated by reason of retirement, resignation or discharge or for any other reason.

(b) **Member of the Police Department.** Member of the Police Department means the Chief of Police and a person duly and regularly appointed in the Police Department, under civil service rules and regulations or provisions of the Charter, or both, governing the making of original regular and permanent appointments which require the serving of probationary periods but not of original emergency or temporary appointments therein, and sworn in, as provided by law, to perform duties as a police officer for the City, under whatever designation such person may be described in any salary or departmental ordinance providing salaries for the members of the department but such person shall be a member of the department only until his or her status as such shall be terminated by reason of his or her retirement, resignation or discharge or for any other reason.

(c) **Plan Member.** Plan Member means a person who is a Department Member and whose pension rights and benefits are governed by this Tier 4.

(d) **Qualified Surviving Spouse.** Qualified Surviving Spouse means a person who is the widow or widower of a deceased Plan Member or Retired Plan Member and who has been married (1) to the Plan Member for at least one year prior to the date of his or her nonservice-connected death while a Plan Member, or (2) to the Plan Member as of the date of his or her service-connected death while a Plan Member, or (3) to the Retired Plan Member for at least one year prior to the effective date of his or her retirement upon a service pension or upon a nonservice-connected disability pension pursuant, respectively, to Section 1604 or Section 1606(b), or (4) to the Retired Plan Member as of the effective date of his or her retirement upon a service-connected disability pension pursuant to Section 1606(a).

(e) **Minor Child.** Minor Child means a person who is a child or an adopted child of a deceased Plan Member or a Retired Plan Member but such person shall be a Minor Child only until such

person shall attain the age of 18 years or shall marry, whichever shall be earlier.

A person may further qualify for the benefits provided for a Minor Child under the provisions of this Tier 4 until he or she reaches the age of 22 years if such person is enrolled in school on a full-time basis as determined by the Board but such person's marriage terminates entitlement to the benefits of a Minor Child.

(f) **Dependent Child.** Dependent Child means a person who is a child of a deceased Plan Member or a deceased Retired Plan Member, who is not married and who, while under the age of 21 years, had become disabled, either prior or after the date of death of such Plan Member or Retired Plan Member, from earning a livelihood for any cause or reason whatsoever, but such person shall be a Dependent Child only until he or she shall cease to be disabled from earning a livelihood. Should disability cease before the age of 22 years, the limitations set forth in subsection (e) shall be applicable.

(g) **Dependent Parent.** Dependent Parent means a person who is a parent of a deceased Plan Member or a deceased Retired Plan Member and to or for whom such deceased Plan Member or deceased Retired Plan Member, during at least one year immediately preceding his or her death, contributed one-half or more of such Dependent Parent's necessary living expenses and who is unable to pay such expenses without the receipt of a pension but such person shall be a Dependent Parent only until he or she shall be able to pay his or her necessary living expenses.

(h) **Length of Service Pay.** Length of Service Pay means any additional gross monthly pay which, by reason of length of service, shall be provided by ordinance.

(i) **Special Pay.** Special Pay means any additional gross monthly pay which, by reason of assignment to perform special duties other than hazardous duties, shall be provided by ordinance.

(j) **Hazard Pay.** Hazard Pay means any additional gross monthly pay which, by reason of assignment to perform helicopter duties, two-wheel motorcycle duties or any other hazardous duties shall be provided by ordinance.

(k) **Assignment Pay.** Assignment Pay means any additional gross monthly pay which, by reason of assignment to perform special duties or hazardous duties, in a higher class, position, grade, code or other title than the lowest thereof within the Plan Member's permanent rank, shall be provided therefor by ordinance.

(l) **Year.** Year means a period of 12 months or, in aggregating partial years for purposes of determining Years of Service, means 365 days.

(m) **Years of Service.** Years of Service means and includes only those periods during or for which the Plan Member was a Department Member of the Fire Department or of the Police Department, or of both and whether prior or after his or her becoming a Plan Member and subject to the limitations contained in Section 1600 of this Tier 4:

- (1) did or shall receive salary, whether in full or reduced amounts thereof;
- (2) did or shall receive either a service-connected disability pension or a nonservice-connected disability pension under any Tier of the Fire and Police Pension Plans, provided, however, that he or she was or shall be restored to active duty as a Department Member and did or shall perform his

or her duties as such for at least one year prior to again retiring or being retired pursuant to this Tier 4, which year shall not include any time off from work by reason of any injury or illness which had been caused by or contributed to by any injury or illness which had been sustained or suffered by him or her prior to such restoration. The restored Plan Member, upon completing one Year of Service following restoration, shall be eligible for such credit only to the extent that the length of service following restoration matches the period the disability pension was received; but upon completing three years of restored service, the restored Plan Member is eligible for credit for the entire period the disability pension was received; and provided further that a period during which a Plan Member was on a nonservice-connected disability pension may only be counted toward his or her Years of Service if the Plan Member makes contributions therefor at the rate provided in Section 1614 of this Tier 4 in accordance with the rules to be adopted by the Board;

- (3) is or shall become entitled, under any provision of general law or ordinance of the City, to credit toward retirement for periods of military service or military leave;
- (4) did or shall receive workers' compensation benefits for temporary disability as provided by general law on account of any injury or illness arising out of and in the course of employment but such period shall be made a part of the Plan Member's Years of Service only if the Plan Member has made contributions to the Fire and Police Pension Plan in the manner prescribed by Board rule;
- (5) is or shall become entitled pursuant to any ordinance of the City providing compensation for injury on duty; and
- (6) had served as a member of the Fire and Police Pension System - Tiers 1 or 2 of this Article, without having become eligible to service retirement benefits but such prior service as a member under provisions of Tiers 1 or 2 does not entitle the Plan Member to a refund of contributions made on account of such previous service.

A Plan Member who has previously been a Plan Member and who has ceased to be such by virtue of his or her resignation or discharge and who subsequently again becomes a Plan Member, shall be entitled to service credit only if he or she has first redeposited with interest, any Plan Member contributions previously withdrawn by him or her, in the manner provided by the Board.

(n) **Partial Year of Service.** Partial Year of Service means any period mentioned in subsection (m) of this section which is less than 12 months. Any such Partial Year of Service shall be calculated from the end of the Plan Member's last completed Year of Service to the end of the payroll period immediately prior to the date of his or her retirement and shall be counted as part of a Plan Member's Years of Service for his or her retirement upon a service pension hereafter granted or for a pension hereafter granted to his or her Qualified Surviving Spouse, Minor Child or children, Dependent Child or children or Dependent Parent or parents if he or she hereafter shall die while upon a service pension hereafter granted or while eligible for a service pension.

(o) **Final Average Salary.** Final Average Salary means an amount equivalent to a monthly average of salary actually received during any 12 consecutive months of service as a Plan

Member as designated by the Plan Member. In the absence of such designation, the last 12 consecutive months preceding the date upon which retirement would become effective shall be used as the basis for the calculation of Final Average Salary.

For Plan Members employed as paramedics or civilian ambulance employees who have formerly been members of the Los Angeles City Employees' Retirement System, and who, pursuant to the provisions of Section 1600 of this Tier 4 have become Plan Members, the determination of Final Average Salary shall include periods of City service for which such Plan Members have elected to acquire Years of Service credit by transfer of their contributions from the Los Angeles City Employees' Retirement System to the Fire and Police Pension Plan - Tier 4. If a Plan Member should die before having made such election, his or her surviving spouse may make the election in place of the Plan Member.

For the purposes of determining Final Average Salary, periods during which the Plan Member receives less than full salary on account of injury or illness, pursuant to any applicable ordinance of the City, shall be included in the calculation of Final Average Salary based upon the salary, including any Length of Service Pay, Special Pay, Assignment Pay or Hazard Pay, the Plan Member would have received but for the injury or illness.

Included in the calculation of Final Average Salary shall be Length of Service Pay, Special Pay, Assignment Pay and Hazard Pay actually received during the 12 consecutive months used to determine Final Average Salary. To the extent that Hazard Pay was not received during all or any part of the 12 consecutive months used to determine Final Average Salary, then it shall be included in the calculation of Final Average Salary only if the Plan Member retires at the same rank as that occupied by him or her at a time when Hazard Pay was received during a period or periods other than the 12 months used to determine Final Average Salary, and for each such completed 12 month period during which the Plan Member served at that rank and received Hazard Pay, he or she shall be entitled to have included in the Final Average Salary 10% of the Hazard Pay which would have been payable had the hazardous duty been performed during the period for which the Final Average Salary is calculated except the total amount includable in the Final Average Salary for Hazard Pay may not exceed 100% of the amount the Plan Member would have received had he or she been entitled to Hazard Pay during the entire 12 month period utilized in the calculation of Final Average Salary.

Overtime compensation or payments of money to the member not designated as salary by an ordinance of the City shall not be considered for purposes of calculating Final Average Salary.

Notwithstanding any of the foregoing, if a Retired Plan Member were to be restored to active duty as a Department Member and thereby again were to become a Plan Member and if he or she again were to retire or to be retired without having performed his or her duties for at least one year subsequent to such restoration, which year shall not include any time off from work by reason of any injury or illness which had been caused by or contributed to by any injury or illness which had been sustained or suffered by him or her prior to such restoration, the Final Average Salary which shall be applicable to his or her later retirement shall be the Final Average Salary which had been applicable to his or her previous retirement.

Should a Plan Member not have completed 12 consecutive months of service as a Plan Member, then and in that event only shall the Final Average Salary be calculated as a monthly average of all consecutive calendar months completed, and, if the Plan Member has completed less than one month of total service as a Plan Member, the salary actually received shall be used to calculate its monthly equivalent.

The following provision shall be effective for Plan Members who retire on or after July 1, 2000 from the Fire Department while holding a rank no higher than Captain or from the Police Department holding a rank no higher than Lieutenant. If Hazard Pay was not received during all or any part of the 12 consecutive months used to determine Final Average Salary, then an amount equivalent to 10% of the Hazard Pay received at the time of the termination of the last assignment to hazardous duties for each year in the aggregate of the assignment to hazardous duties shall be added to the Final Average Salary, not to exceed ten years in the aggregate. The total amount of Hazard Pay included in Final Average Salary may not exceed 100% of the amount the Plan Member would have received had the Plan Member been entitled to Hazard Pay during the entire 12 month period utilized in the calculation of Final Average Salary.

Sec. 1604. Service Retirement and Vesting.

(a) **Normal Retirement.** Any Tier 4 Member with 20 years of service or more shall be retired by order of the Board from further active duty as a Department Member either upon the filing of his or her written application or upon the filing of a written request by or on behalf of the head of the department in which he or she is a Department Member, if it shall be determined by the Board to be for the good of such department, other than for a cause or reason which would entitle such Plan Member to a disability pension pursuant to Section 1606, and the Board, if it shall so determine, shall state the cause or reason in its order retiring such Plan Member.

(b) **Includable Years of Service.** For Tier 4 Members, Years of Service shall include prior service covered under any other Tier of the Fire and Police Pension Plan.

(c) **Physical Examination for Employees Age 70 and Over.** After a Tier 4 Member has attained the age of 70 years, he or she shall annually submit to an examination by a regularly licensed, practicing physician selected by the head of his or her department who shall render a written report to such department and to the Board as to whether or not the Plan Member is physically and mentally fit to continue his or her duties as a Department Member. If the Plan Member is found by the Board not to be physically or mentally fit to so continue his or her duties, he or she shall be retired effective the first day of the calendar month next succeeding that month in which the physician's report is received by the Board.

(d) **Pension Amount.** A pension payable pursuant to the provisions of this section shall be paid monthly for life in an amount which shall be equal to 2% of Final Average Salary per Year of Service for up to 20 Years of Service; and for each additional year of service after 20 years, 3% of Final Average Salary per year but the maximum percentage of Final Average Salary payable, regardless of length of service, shall be 70% of such Final Average Salary.

Sec. 1606. Disability Pensions.

(a) **Service-Connected Disability.** Upon the filing of his or her written application for a disability pension or upon the filing of a

written request therefor by or on behalf of the head of the department in which he or she is a Department Member, any Plan Member whom the Board shall determine has become physically or mentally incapacitated by reason of injuries received or sickness caused by the discharge of the duties of such person as a Department Member, and who is incapable as a result thereof from performing his or her assigned duties, or those to which he or she would be assigned within the Plan Member's civil service classification if returned to duty, shall be retired by order of the Board from further active duty as a Department Member.

A Plan Member's incapacity is caused by the discharge of his or her duties if there is clear and convincing evidence that the discharge of the Plan Member's duties is the predominant cause of the incapacity.

A Plan Member retired under the provisions of this subsection shall be paid thereafter a monthly service-connected disability pension in an amount which shall be equal to the same percentage of the Plan Member's Final Average Salary as the Board shall determine, from time to time, to be the percentage of his or her disability. Such pension shall be in an amount of not less than 30% and not more than 90% of the Retired Plan Member's Final Average Salary, but in no case shall the pension be less than the equivalent of 2% of Final Average Salary for each Year of Service of the Retired Plan Member.

No Retired Plan Member, while retired pursuant to this subsection, ever shall be paid any pension pursuant to Section 1604 or subsection (b) of this section.

(b) **Nonservice-Connected Disability.** Upon the filing of his or her written application for disability pension by a Plan Member who shall have five Years of Service or more, or upon the filing of a written request therefor with respect to such a Plan Member by or on behalf of the head of the department in which he or she is a Department Member, any Plan Member whom the Board shall determine has become physically or mentally incapacitated by reason of injuries or sickness other than injuries received or sickness caused by the discharge of the duties of such person as a Department Member, and who is incapable as a result thereof from performing his or her assigned duties or those to which he or she would be assigned within the Plan Member's civil service classification if returned to duty, shall be retired by order of the Board from further active duty as a Department Member.

As a further condition of entitlement to such a pension, the Board shall also determine that such disability was not principally due to or caused by voluntary action of the Plan Member intended to entitle him or her to a nonservice-connected disability pension.

A Retired Plan Member, retired under the provisions of this subsection shall be paid thereafter a monthly nonservice-connected disability pension in an amount which shall be equal to the same percentage of the Retired Member's Final Average Salary as the Board shall determine, from time to time, to be the percentage of his or her disability but such pension shall be in an amount of not less than 30% and not more than 50% of the Retired Plan Member's Final Average Salary.

No Retired Plan Member, while retired pursuant to this subsection, ever shall be paid any pension pursuant either to Section 1604 or to subsection (a) of this section.

(c) **Determination of Disability.** Upon the filing of any written application or request for a disability pension, as referred to in subsections (a) and (b) of this section, the Board: (1) shall

cause the Plan Member to be examined by and a written report thereon rendered by at least three regular licensed and practicing physicians selected by it; (2) shall hold a hearing with respect to such application or request; (3) shall receive or hear such other evidence relating to or concerning the Plan Member's disability or claimed disability as may be presented to it. The Board shall have the power to hear and determine all matters pertaining to the granting and denying of any such application or request for a disability pension. The Board first shall determine whether or not the Plan Member is incapable of performing his or her assigned duties or those to which he or she would be assigned within the Plan Member's civil service classification if returned to duty. If the Board were to determine that he or she is not so incapable, it then shall be the duty of the Board to deny the application or request. If the Board were to determine that he or she is so incapable, it then shall determine, pursuant to the language used in subsections (a) and (b) of this section, whether his or her incapacity or disability is service-connected or nonservice-connected. The Board then shall determine the percentage of his or her incapacity or disability, within the limitations prescribed in subsections (a) and (b) of this section, and shall grant the application or request accordingly. If the Board were to determine that the disability is nonservice-connected, and that the incapacity or disability was principally due to or caused by voluntary action by the Plan Member intended to entitle him or her to a nonservice-connected disability pension, it then shall be the duty of the Board to deny the application or request. The Board upon its own motion or upon the written request of any Retired Plan Member, retired pursuant to subsections (a) or (b) of this section, shall have the power to consider new evidence pertaining to the case of any such Retired Plan Member and to increase or decrease the percentage of his or her incapacity or disability within the limitations prescribed in subsections (a) or (b) of this section but any such increase or decrease shall be based only upon injuries or sickness for which he or she was retired. In the case of any former Plan Member who became such by reason of his or her resignation or discharge as a Department Member, the Board, in order to grant any application filed by him or her for a disability pension, must also determine, in addition to all of the foregoing, that any existing incapacity or disability upon his or her part occurred prior to the termination of his or her active status as a Department Member and had been continuous up to the date of the Board's determinations.

The Board shall adopt by rule, within a reasonable time, a disability rating schedule to assist in standardizing disability pension awards.

(d) Termination of Disability Pensions. The pension of any Retired Plan Member, retired pursuant to subsections (a) or (b) of this section and whose active status as a Department Member had been terminated by reason of his or her retirement, shall cease when the incapacity or disability for which he or she had been retired shall cease and he or she either:

- (1) shall have been restored to active duty as a Department Member in the same permanent rank which he or she had held as of the date of retirement; or
- (2) shall have been ordered restored to active duty as a Department Member in such same permanent rank and shall have declined, refused or neglected to report therefor or to perform duties as such.

Any former Plan Member who has been retired for more than five years from the date of the Board's action by which he or she was retired may never be restored to active duty as a Department Member. The pension of any Retired Plan Member, retired pursuant to subsections (a) or (b) of this section and whose active status as a Department Member had been terminated by reason of his or her resignation or discharge as such, shall cease when the incapacity or disability for which he or she received a disability pension shall cease. The Board shall have the power to hear and determine upon its own motion all matters pertaining to the termination of any such pension.

After a Retired Plan Member, whose active status as a Department Member has been terminated by reason of his or her retirement, has been retired on a service-connected disability pension or on a nonservice-connected disability pension for five years, and has been found to be no longer disabled, the Board shall adjust such Retired Plan Member's pension to 30% of his or her Final Average Salary. The adjusted pension shall reflect such cost of living adjustments as would have occurred had the Retired Plan Member's pension originally been based on such adjusted percentage.

(e) Periodic Medical Examinations. Except in those instances in which the Board has determined that, due to the nature of the disability, no purpose would be served in having periodic medical examinations to determine whether or not a Retired Plan Member is still disabled, all Retired Plan Members on a disability pension shall undergo medical examinations at periodic intervals, as determined by the Board, for the first five years of their disability retirement. Retired Plan Members who receive service-connected disability pensions exceeding 30% of Final Average Salary and Plan Members who terminated City employment by reason of resignation or discharge prior to being granted a disability retirement, shall thereafter undergo medical examinations as determined by the Board.

If a Retired Plan Member resides outside of the State of California, the Board shall have the authority to order medical examinations of Retired Plan Members at any place it may determine to be desirable and shall, if it is determined that it would impose hardship on the person to be examined to travel to such place, have the authority to defray the reasonable cost of any such travel required.

(f) Assessing Cost for Missed Medical Appointments. The Board shall have the authority to provide, by rule, for assessing the cost of medical appointments missed by disability pension applicants, or by Retired Plan Members on a disability pension, where such missed appointments were not caused by factors beyond the control of the Plan Member or Retired Plan Member.

(g) Re-application After Denial of Disability Pension. The Board shall establish reasonable rules governing the re-application by Plan Members for a disability pension where an application has been denied and a new application has been filed subsequently for the same or similar medical reasons as those which were the basis of a previously denied application.

(h) Transfers Under Civil Service. For a period of one year following the effective date of a Retired Plan Member's disability pension, such Retired Plan Member shall be eligible for status without examination under the provisions of Section 1014 of the Charter in civil service classifications other than those that would entitle him or her to membership in any of the Fire and Police

Pension Plans established by this Article; but the provisions of this subsection shall not apply to former Plan Members whose status as Department Members had terminated by reason of resignation or discharge.

(i) **Exclusion for Willful Conduct.** In making its determinations and findings relative to subsections (a), (b), and (c) of this section, the Board shall consider whether and to what extent the activity giving rise to the disability of a member of the Police Department was caused or aggravated by such member's willful misconduct. If the Board finds that the disability was caused or aggravated by such willful misconduct, the Board shall deny the Plan Member's application for a disability pension. The provisions of this subsection shall be applicable only to those Plan members who became members of the Police Department on or after July 6, 1992.

Sec. 1608. Survivorship Pensions.

(a) Pension for Qualified Surviving Spouse.

(1) *Plan Member's Service-Connected Death.* The Qualified Surviving Spouse of a Plan Member who shall die by reason of injuries received or sickness caused by the discharge of his or her duties while a Department Member, shall be paid for life a monthly pension in an amount which shall be equal to 75% of the deceased Plan Member's Final Average Salary.

For the purposes of the benefit provided in this subsection (a)(1), a Plan Member has died by reason of injuries received or sickness caused by the discharge of his or her duties if there is clear and convincing evidence that the discharge of the Plan Member's duties were the predominant cause of his or her death.

(2) *Plan Member's Nonservice-Connected Death.* The Qualified Surviving Spouse of a Plan Member who shall have five or more Years of Service and who shall die while a Department Member, by reason of injuries or sickness other than injuries received or sickness caused by the discharge of his or her duties, shall be paid for life a monthly pension in an amount which shall be equal to 30% of the deceased Plan Member's Final Average Salary, or, if the Plan Member, at the time of death, was then eligible to receive a pension on account of Years of Service, 80% of the amount of such service pension as the Plan Member at the time of his or her death would have been entitled to receive on account of Years of Service whichever is higher but the entitlement of a Qualified Surviving Spouse under the provisions of this subsection (a)(2) may not exceed 40% of the deceased Plan Member's Final Average Salary.

(3) *Retired Plan Member's Death While on a Service Pension.* The Qualified Surviving Spouse of a Retired Plan Member, who shall die while he or she is receiving a pension pursuant to Section 1604, shall be paid for life a monthly pension in an amount which shall be equal to 60% of the pension received by the deceased Retired Plan Member immediately preceding the date of his or her death. The benefit described in this subsection (a)(3) may be modified as provided in subsection (b) of this section.

(4) *Retired Plan Member's Death While on a Service-Connected Disability Pension.* The Qualified Surviving Spouse of a Retired Plan Member, who shall die while he or she is receiving a service-connected disability pension

pursuant to Section 1606, shall be paid for life a monthly pension in an amount which shall be equal to 60% of the pension received by the deceased Retired Plan Member immediately preceding the date of his or her death, unless the death of the Retired Plan Member occurs within three years after the effective date of his or her pension and is due to service-connected causes, in which case, the qualified Surviving Spouse shall receive, or in a case where an option has been elected pursuant to subsection (b) of this section, may elect to receive, 75% of the Retired Member's Final Average Salary, as modified by the cost of living adjustments made pursuant to Section 1616 of this article since the date of retirement of the Retired Plan Member. The benefit described in this subsection (a)(4) may be modified as provided in subsection (b) of this section.

(5) *Retired Plan Member's Death While on a Nonservice-Connected Disability Pension.* The Qualified Surviving Spouse of a Retired Plan Member, who shall die while he or she is receiving a nonservice-connected disability pension pursuant to Section 1606, shall be paid for life a monthly pension in an amount which shall be equal to 60% of the pension received by the deceased Retired Plan Member immediately preceding the date of his or her death. The benefit described in this subsection (a)(5) may be modified as provided in subsection (b) of this section.

(6) *Nonservice-Connected Death of Plan Member with Less than Five Years of Service.* In the event the Plan Member died of nonservice-connected causes before having completed five years of Service, the Qualified Surviving Spouse of the deceased Plan Member, or his or her Minor or Dependent Children if there is no Qualified Spouse, or his or her Dependent Parents if there is No Qualified Surviving Spouse and no Minor or Dependent Children, shall be entitled to the Basic Death Benefit described in subsection (a)(7) below.

(7) *Basic Death Benefit and Election.* The Basic Death Benefit shall consist of: (1) the return of a deceased Plan Member's contributions to the Plan with accrued interest thereon; subject, however to the rights created by virtue of the Plan Member's designation of a beneficiary as otherwise provided in this article; and (2) if the deceased Plan Member had at least one year of Service, the deceased Plan Member's Final Average Salary multiplied by the number of completed Years of Service, not to exceed six years; provided that said amount shall be paid in monthly installments of one-half of the deceased Plan Member's Final Average Salary.

A Qualified Surviving Spouse, or a guardian acting on behalf of the Minor or Dependent Children of a deceased Plan Member if there is no Qualified Surviving Spouse, or Dependent Parents if there is no Qualified Surviving Spouse and no Minor or Dependent Children entitled to a pension pursuant to any of the provisions of this section, where benefits are based upon the Plan Member's death in active service, may in lieu of the pension provided and before the first payment of such pension, elect to receive the Basic Death Benefit.

(b) **Optional Pensions for Qualified Surviving Spouse.** At any time before the first payment of a service pension, a service-connected disability pension, or a nonservice-connected disability pension, the Plan Member may elect to receive, in lieu of his or her pension as provided in Section 1604 or Section 1606, the actuarial equivalent at that time of such pension and of the pension for the Qualified Surviving Spouse as provided in subsection (a) of this section, by electing an optional pension payable throughout the balance of his or her life, with the provisions that upon his or her death such optional pension shall be continued to the Plan Member's Qualified Surviving Spouse in the proportional amount designated by the Plan Member at the time of election of the option provided by this section.

The amount of such optional pension shall be so calculated that the liability of the Fire and Police Pension Plan – Tier 4 at the date of retirement under the optional pension shall be equal to the liability of the Fire and Police Pension Plan – Tier 4 at the same date under the pension awarded in accordance with the provisions of Section 1604 or Section 1606 and of the survivorship pension provided by subsection (a) of this section. For the purpose of this section, the liability of the Fire and Police Pension Plan – Tier 4 is defined as the present value, in accordance with tables adopted by the Board, of the pensions or optional pensions calculated by approved actuarial methods, and recommended by the Board's actuary. In determining the actuarial equivalent of the pension for a Qualified Surviving Spouse as provided pursuant to subsections (a)(3), (4) and (5) of this section, the equivalent of a 60% survivorship pension shall be used in all cases.

The optional amounts, calculated in accordance with the foregoing paragraph, shall provide a range of optional values such that the amount to be paid to the Qualified Surviving Spouse of the Plan Member shall range from 60% to 100% of the pension payable to the Plan Member, varying by increments of 5%.

If a Retired Plan Member, previously retired on a disability pension pursuant to the provisions of Section 1606, should be reinstated to active duty upon termination of his or her disability, the election to receive the optional pension as herein provided, shall be deemed cancelled as of the effective date of such reinstatement.

A Retired Plan Member, previously retired on a disability pension pursuant to the provisions of Section 1606 and whose pension has subsequently been adjusted as provided for in Section 1606, shall have the right to cancel any option previously elected by him or her pursuant to the provisions of this subsection.

The Board shall by rule provide for a method in which the election to receive an optional pension shall be exercised.

(c) **Additional Pension Amounts.** Whenever any Plan Member or Retired Plan Member shall die and leave surviving him or her, in addition to a Qualified Surviving Spouse, a Minor Child or Children or a Dependent Child or Children of his or her marriage to the Qualified Surviving Spouse, then such Qualified Surviving Spouse, shall be paid an additional monthly pension in an amount which shall be equal to 25% of the pension he or she as a Qualified Surviving Spouse would be entitled to pursuant to the provisions of subsection (a) of this section while there is one Minor Child or Dependent Child, 40% while there are two Minor Children or Dependent Children or a combination thereof, and 50% while there are three or more Minor Children or Dependent Children or a combination, and such additional monthly pension

shall be the exclusive property of such Qualified Surviving Spouse and not the property of any such Minor Child or Dependent Child. Whenever any Plan Member or Retired Plan Member shall die and leave surviving him or her in addition to a Qualified Surviving Spouse, a Minor Child or Children or a Dependent Child or Children of his or her marriage to a former spouse, then the guardian or guardians of the estate or estates of any such Minor Child or Children or Dependent Child or Children shall be paid a monthly pension in an amount which shall be equal to 25% of the pension the Qualified Surviving Spouse would be entitled to pursuant to the provisions of subsection (a) of this section while there is one Minor Child or Dependent Child, 40% while there are two Minor Children or Dependent Children or a combination, and 50% while there are three or more Minor Children or Dependent Children or a combination.

Whenever any Plan Member or Retired Plan Member shall die and leave surviving him or her, in addition to a Qualified Surviving Spouse, a Minor Child or Children or a Dependent Child or Children of his or her marriage to the Qualified Surviving Spouse and a Minor Child or Children or a Dependent Child or Children of his or her marriage to a former spouse, then a monthly pension shall be paid in an amount which shall be equal to 25% of the pension the Qualified Surviving Spouse would be entitled to pursuant to the provisions of subsection (a) of this section while there is one (1) Minor Child or Dependent Child, 40% while there are two (2) Minor Children or Dependent Children or a combination, and 50% while there are three (3) or more Minor Children or Dependent Children or a combination. The amount of such monthly pension shall be divided by the number of Minor Children or Dependent Children and shall be adjusted accordingly whenever any Minor or Dependent Child shall cease to be such. The Qualified Surviving Spouse shall be paid the portion of such monthly pension which shall be applicable to the number of his or her Minor Children or Dependent Children and the same shall be her or his exclusive property. The guardian or guardians of the estate or estates of the Minor Children or Dependent Children who are not those of the Qualified Surviving Spouse shall be paid the portion of such monthly pension which shall be applicable to such Minor Children or Dependent Children and the same shall be the exclusive property of such children.

The additional pension amounts provided in this subsection for persons other than a Qualified Surviving Spouse are to be calculated on the basis of the applicable Qualified Surviving Spouse pension provided pursuant to subsection (a) of this section, unmodified by any election that may previously have been made pursuant to the provisions of subsection (b) of this section.

Additional pension amounts are also subject to the limitation that the amount of any survivorship pension provided in this section, after the additional payments provided in this subsection are added thereto, may not exceed 100% of the Final Average Salary of the deceased Plan Member or 100% of the Final Average Salary of the Retired Plan Member, as modified by the cost of living adjustments made pursuant to Section 1616 of this Tier 4 since the date of retirement of the Retired Plan Member. In case of such excess, any additional pension amounts shall be reduced to a level where the total amount of pension is equal to such maximum.

(d) **Reinstatement of Pension of Reinstated Qualified Surviving Spouse.** Subject to Section 1208 of the General Provisions for Fire and Police Pension Plans, any Qualified Surviving Spouse, who shall marry and thereby cease to be a Qualified Surviving Spouse, shall be reinstated as a Qualified Surviving Spouse as of:

- (1) the date upon which a judgment or decree shall become final dissolving such marriage upon any ground or declaring a void or voidable marriage to have been null and void or voided but such date shall be within five years from the date of the marriage ceremony; or
- (2) the date upon which such marriage shall be dissolved by the death of the other party thereto but such date shall be within five years from the date of the marriage ceremony. Such reinstated Qualified Surviving Spouse shall be entitled to the reinstatement of his or her pension effective as of either such date, which shall be applicable, but shall not be entitled to the payment of any pension for the period prior to such applicable date and subsequent to the date of the marriage ceremony. The pension paid to any other persons entitled under the provisions of the Fire and Police Pension Plan – Tier 4 during the period of the marriage or purported marriage of such reinstated Qualified Surviving Spouse shall cease when his or her pension shall be reinstated, except as otherwise provided in subsection (c) of this section. However, should such reinstated Qualified Surviving Spouse thereafter be a party to another marriage ceremony, his or her pension shall cease and never again shall be reinstated regardless of whether such marriage ceremony shall result in a valid marriage or in a voidable or void marriage and whether or not the same legally shall be terminated.

(e) **Pension for Minor or Dependent Children.** Whenever any Plan Member or Retired Plan Member shall die without leaving a Qualified Surviving Spouse, the guardian of the estate of his or her Minor or Dependent Children shall be paid, until each such child shall cease to be a Minor or Dependent Child, a monthly pension equal to the pension a Qualified Surviving Spouse would have been eligible to receive pursuant to subsection (a) of this section had a Qualified Surviving Spouse survived such Member. Whenever any Plan Member or Retired Plan Member shall die leaving a Qualified Surviving Spouse who thereafter shall die or who thereafter shall cease to be a reinstated Qualified Surviving Spouse, the guardian of the estate of his or her Minor or Dependent Children shall be paid, until each such child shall cease to be a Minor or Dependent Child, a monthly pension equal to the pension a Qualified Surviving Spouse would have been eligible to receive pursuant to subsection (a) of this section. In any of the foregoing events and if there were to be more than one Minor or Dependent Child, an equal share of such monthly pension shall be paid for and on behalf of each such child to the guardian of his or her estate and shall be adjusted as each of them shall cease to be a Minor or Dependent Child in the manner set forth in subsection (c) of this section. If payments are made pursuant to this subsection (e), no additional pension amounts shall be paid pursuant to subsection (c) of this section.

(f) **Pension for Dependent Parents.** Whenever any Plan Member or Retired Plan Member shall die without leaving a Qualified Surviving Spouse or a Minor or Dependent Child, a

monthly pension shall be paid to such Dependent Parents or to the survivor of them until each such Dependent Parent shall cease to be such. Any Dependent Parent who shall cease to be such but who thereafter again shall become unable to pay his or her necessary living expenses without a pension shall be entitled to have his or her pension reinstated.

The total amount of a pension payable to the Dependent Parents shall be the same as that to which a Qualified Surviving Spouse would have been entitled pursuant to subsection (a) of this section.

(g) **Determinations With Respect to Cause of Death and Dependency.** The Board shall have the same power as that which has been given to it by Section 1606(c) and (d) in order to determine:

- (1) the fact whether a Plan Member's death was service-connected or nonservice-connected for the purposes of Section 1608(a)(1) and (2);
- (2) the fact of whether or not a child of a deceased Plan Member or Retired Plan Member is a Dependent Child; and
- (3) whether or not any parent of a deceased Plan Member or Retired Plan Member is a Dependent Parent.

The Board also shall have the power to determine, from time to time, the fact of whether or not a child continues to be a Dependent Child, the fact of whether or not a parent continues to be a Dependent Parent and the fact of whether or not a Dependent Parent who had ceased to be such thereafter shall have become entitled to have his or her pension reinstated.

(h) **Medical Reports and Hearings.** The power of the Board to determine the fact of whether a Plan Member's death was service-connected or nonservice-connected, as provided in subsection (g) of this section, hereafter may be exercised by it upon the basis of a written report from one regularly licensed and practicing physician selected by it but the Board, in its discretion, may obtain such a report from more than one such physician. The determination hereinbefore referred to in this subsection may, at the option of the Board, be made without a hearing being held pursuant to the provisions of subsection (g) of this section.

(i) **Distribution of Contributions.** Whenever a Plan Member dies without leaving a person or persons entitled to receive a pension pursuant to the provisions of this section, then, and in that event, his or her contributions to the Plan, together with such interest as may have been credited to the Plan Member's individual account shall be paid to such person as he or she shall have nominated by written designation duly executed and filed with the Board. In the event there is no written designation of beneficiary, surviving spouse, children or parents, then the contributions shall be paid to the executor or administrator of the estate of such deceased Plan Member, or to any other person legally authorized to collect money due the decedent.

Sec. 1610. Tier 4 Pension Funds.

(a) **Creation of Funds.** Two entirely separate and distinct funds hereby are created and established for the payment of pension benefits pursuant to this Tier 4, for the payment of certain other benefits as may be authorized by ordinance pursuant to the enabling provisions of this Tier 4 and for the payment of the administrative expenses of the Fire and Police Pension Plan – Tier 4, one of which shall be known as the "Fire and Police Tier 4

Service Pension Fund” and the other of which shall be known as the “Fire and Police Tier 4 General Pension Fund.”

(b) **Fire and Police Tier 4 Service Pension Fund.** The Fire and Police Tier 4 Service Pension Fund shall consist of:

- (1) deductions made pursuant to Section 1614, from the salaries of Plan Members;
- (2) all contributions and donations to the Fire Department or to the Police Department for services by any Plan Members, except amounts of money donated to provide for any medal or permanent competitive award;
- (3) all fines imposed upon Plan Members for violations of rules and regulations of the respective department in which they are Department Members;
- (4) proceeds from the sale of unclaimed property as determined by the Board; and
- (5) all interest, earnings and profits resulting from investments of such monies.

(c) **Fire and Police Tier 4 General Pension Fund.** The Fire and Police Tier 4 General Pension Fund shall consist of:

- (1) all monies appropriated to the fund by the Council; and
- (2) all interest, earnings and profits resulting from investment of such monies.

(d) **Use of Funds.** The monies in the Fire and Police Tier 4 Service Pension Fund shall be used, other than for the investment thereof, exclusively for the payment of service pensions granted pursuant to Section 1604 and for the refund of contributions as provided in this Tier 4. The monies in the Fire and Police Tier 4 General Pension Fund shall be used, other than for the investment thereof, exclusively for the payment of all pensions other than service pensions, such benefits as may be provided by ordinance adopted pursuant to the enabling provisions contained in this Tier 4 and of all administrative expenses of the Fire and Police Tier 4 Pension Plan.

(e) **Authorized Transfer Between Funds.** In the event that the money in the Fire and Police Tier 4 Service Pension Fund should be insufficient, at any time, to pay all service pensions, then the Board shall have the power and authority to cause the Controller to transfer to the fund sufficient money therefor from the Fire and Police Tier 4 General Pension Fund. In no other event shall any of the money in either of the funds be commingled with any money in the other fund.

(f) **Benefits Shall Be a General Obligation of the City.** The obligation to pay benefits pursuant to this Tier 4 shall be a general obligation of the City.

Sec. 1612. Actuarial Determinations and Tier 4 Unfunded Liabilities.

(a) **Actuarial Standards.** The Fire and Police Pension Plan – Tier 4 shall be maintained on a reserve basis which, for the purposes of this Tier 4, shall mean one which provides for the accumulation and maintenance of the Fire and Police Tier 4 Service Pension Fund and the Fire and Police Tier 4 General Pension Fund which together will at all times be equal to the difference between the present value of the obligations assumed and the present value of the monies to be received for paying such obligations, where such present values are estimated in accordance with accepted actuarial methods and on the basis of an assumed rate of interest and the mathematical probabilities of the occurrence of such contingencies as affect both the payment of

the assumed obligations and the receipt of monies with which they are to be paid in accordance with the provisions of Sections 1210(b)(4) and 1614.

(b) **Actuarial Valuations.** The Board shall secure an actuarial valuation showing the cost of maintaining the plan and funds on such reserve basis and, at intervals of not to exceed five years, shall cause to be made an actuarial investigation including, but not limited to, the mortality, service and salary experience of the Plan Members and other beneficiaries and shall further cause to be made annually an actuarial valuation of the assets and liabilities of the funds.

The Board, from time to time and with the advice of the investment counsel, shall establish such an assumed rate of interest for the purpose of actuarial valuations, as in its judgment seems proper in the light of the experience and prospective earnings on the investment of the funds.

(c) **Retention of Actuary.** The Board shall retain a competent consulting actuary for the purpose of making the necessary actuarial studies, reports, investigations and valuations and shall, with the advice of the actuary, adopt such actuarial assumptions as shall be necessary.

(d) **Accounting for Unrealized Profits and Losses.** With the advice of the consulting actuary and of the investment counsel, the Board, for the purpose of the actuarial valuations, may provide by rule for the manner and the extent to which any unrealized profits or losses in the equity type investments of the funds shall be taken into account.

(e) **Unfunded Liabilities.** The unfunded liabilities of the Fire and Police Pension Plan – Tier 4 shall be funded in accordance with the actuarial funding method adopted by the Board upon the advice of its consulting actuary. Any unfunded liabilities resulting from amendment of the provisions of this Tier 4 or by ordinance as authorized by this Tier 4 shall be amortized over a 30 year period. Actuarial experience gains and losses shall be amortized over a 15 year period.

Sec. 1614. Member Contributions – Tier 4.

(a) **Contribution Amount.** Each Plan Member shall contribute to the Fire and Police Pension Plan – Tier 4 by salary deduction at the rate of 8% of the amount of his or her salary, except that further contributions to the Plan shall not be required from a Plan Member who has served as a Plan Member more than 30 years.

For purposes of determining the amount of the deduction, Salary shall mean those elements of a Plan Member’s compensation which would be included in calculating Final Average Salary. The administrative head of the Fire Department or the Police Department shall cause to be shown on each and every payroll of such department a deduction of 8% of the amount of salary of each Plan Member whose name appears thereon.

(b) **Member Accounts.** The Board shall maintain an individual account of the contributions by or for each Plan Member, as hereinabove provided. Regular interest shall be credited to such individual accounts as of the last day of June and December of each year at such rate as the Board may deem proper in light of the Fire and Police Pension Plan’s earnings, exclusive of profits and losses on principal heretofore or hereafter resulting from sales of securities. No such interest shall be credited at any other time or to the individual account of any person who is not a Plan Member but such interest shall be credited to the individual account of a Plan Member whose employment is terminated for

any reason for any period of service between the next preceding last day of June or December and the end of the pay period preceding the date of such termination at the rate at which regular interest was last credited to Plan Members' individual accounts.

(c) **Payroll Deduction.** Each Plan Member shall be deemed to consent and agree to each deduction made as provided for herein and the payment of each payroll check to such Plan Member shall be a full and complete discharge and acquittance of all claims and demands whatever for the services rendered by each member during the period covered by such payroll, except such claims as such Plan Member has to the benefits or payments provided for in this Tier 4.

(d) **No Right to Refund of Contributions.** Tier 4 Plan Members shall not be entitled to a refund of contributions upon termination of employment. Every person hired prior to July 1, 1997 who makes an irrevocable election in writing to receive benefits under Tier 4 shall not be entitled to a refund of contributions made prior to or after such election upon termination of employment.

Survivors of deceased members of Tier 4 shall be eligible for a refund of a deceased Tier 4 member's contributions only in accordance with the Basic Death Benefit as provided in Section 1608(a)(7). Interest on contributions paid under the Basic Death Benefit shall be credited in accordance with the provisions described in Section 1614.

(e) **Assuring Full Member Contributions.** The Board shall have rule-making authority to insure that the Fire and Police Pension Plan – Tier 4 receives member contributions for all periods of credited service, except that the Board shall not have authority to require contributions for service credit for military service and for periods while a Plan Member is receiving a disability pension, or full pay for Injury On Duty. Plan Members, however, may elect to make contributions for periods of Injury on Duty compensated at the rate provided by general law in order to acquire credit for Years of Service for such period. Such contributions shall be at the contribution rate herein provided and shall be based on the salary the Plan Member would have received if he or she had not occupied Injury On Duty status.

Sec. 1616. Cost of Living Adjustments.

(a) **Determination of Cost of Living Adjustments.** The Board, before May 1 of each year commencing with the year 1981, shall determine the percentage of the annual increase or decrease in the cost of living as of March 1 of that year from March 1 of the preceding year as shown by the Consumer Price Index for All Urban Consumers as published by the Bureau of Labor Statistics or such other index as the Federal Government may develop to replace the All Urban Consumers Index for the area in which the City is located. If any such index were not to reflect the cost of living as of a particular March 1, then the index for the closest preceding date shall be used.

(b) **Annual Cost of Living Adjustments.** Commencing as of July 1 of the year in which the Board shall determine the percentage of increase or decrease in the cost of living, the monthly amounts of all pensions granted pursuant to the provisions of this Tier 4, shall be increased or decreased by reason of such determined percentage of increase or decrease in the cost of living, not to exceed an increase or decrease of 3% in any given year. Pensions which became payable before July 1, but subsequent to the preceding July 1, will be adjusted on a prorated

basis whereby one-twelfth of the annual adjustment shall be applied for each completed month since such pension commenced.

In no event shall pensions adjusted hereunder ever be decreased below the amount received by the Beneficiary when such pension first became payable to him or her.

(c) **Discretionary Cost of Living Adjustments.** To the extent that the annual cost of living adjustments provided by subsection (b) hereof are less than the annual change in the cost of living as determined in subsection (a) hereof, the Council may grant discretionary cost of living adjustments, in addition to the annual cost of living adjustments provided by subsection (b) hereof, subject to the following conditions and requirements:

- (1) *No More Than Every Three Years.* Discretionary adjustments may not be provided more frequently than once every three years, counting from the effective date of this section and, after a discretionary adjustment has once been made, counting from the date the last discretionary adjustment became effective.
- (2) *Limit of Adjustments.* Discretionary adjustments shall not exceed one-half of the difference between the percentage of the annual increases in the cost of living, as determined pursuant to the provisions of subsection (a) of this section, and the annual adjustments made pursuant to subsection (b) of this section for each of the preceding three years. Discretionary adjustments shall be allocated to each of the three years for which an adjustment is made.
- (3) *Pensions Eligible for Adjustment.* Discretionary adjustments herein provided shall be applied to pensions granted pursuant to Sections 1604, 1606 and 1608 subject to the following limitations: If a pension became payable on or after July 1 immediately preceding the effective date of such adjustment, it shall not be so adjusted; and any pension which shall have become payable at a time within the three year period (but prior to the immediately preceding July 1), shall be prorated on a monthly basis to the number of completed months for which the pension was received, provided that pensions paid pursuant to Section 1608(a)(3), (4) or (5), or Section 1608(c), (e) or (f), shall be adjusted by basing eligibility on the date upon which the Retired Plan Member's pension became effective.
- (4) *Report to Council Prior to Adoption by Ordinance.* Discretionary cost of living adjustments may be provided only by ordinance. Ordinances providing discretionary adjustments may not be finally adopted until the Council has first obtained and published a report from the actuary or actuaries of the Fire and Police Pension Plan – Tier 4 indicating the present value of the liabilities that will be created by the proposed discretionary adjustment. This report must identify the annual funding cost of amortizing this liability over a 30 year period utilizing the funding procedure adopted by the Board.
- (5) *Vote by Council.* Ordinances adopted pursuant to this subsection must be by not less than two-thirds of the membership of the Council, subject to the veto of the Mayor and re-adoption by the Council by not less than three-fourths of the membership of Council. No such ordinance may be finally adopted by the Council until the

expiration of at least 30 days after its first presentation to the Council, nor until after a public hearing has been held thereon. Ordinances adopted pursuant to this subsection, shall be published no later than November 30, and shall become effective January 1.

- (6) *Prospective Application.* All adjustments provided in this subsection are to be applied prospectively only and shall not be understood to permit retroactive adjustments of pensions.

Sec. 1618. Provision of Certain Subsidy Payments by Ordinance.

(a) **Purpose of this Section.** It is the purpose of this section to enable the Council to provide by ordinance a program or programs whereby persons receiving pensions pursuant to the provisions of this Tier 4 may become eligible to have subsidy payments made on their behalf for health insurance, accident insurance, life insurance or health care plan coverage or coverage for any combination of such programs as determined by the Council and subject to such conditions of entitlement as may be set forth in any ordinance adopted in accordance with the provisions of this section.

(b) **Mode of Adoption of Ordinance.** Ordinances adopted pursuant to this section must be approved by not less than two-thirds of the membership of the Council, subject to the veto of the Mayor and readoption by the Council by three-fourths of the membership of the Council. No such ordinance may be finally adopted by the Council until the expiration of at least 30 days after its first presentation to the Council, nor until after a public hearing has been held thereon. Any ordinance adopted pursuant to this section shall go into effect upon its publication, but the terms of such ordinance, or portions thereof, may be operative at a later date or dates.

(c) **Limitations on Council's Authority.** An ordinance adopted pursuant to this section may not provide for subsidy payments for any individual, the total amount of which, including subsidy payments from a City fund or funds other than those created under Section 1610, would be in excess of the maximum available subsidy payment for beneficiaries under the provisions of any ordinance adopted pursuant to the authority of Section 1168 of the Charter, nor may such subsidy payments be in excess of any amounts allowed active members of the Tier 4 System.

(d) **Administration of Subsidy Program.** Any subsidy program adopted by ordinance pursuant to this section shall be administered by the Board. In furtherance thereof, the Board shall have the authority to contract for suitable programs as defined in subsection (a), to be made available to retired members or other beneficiaries, and shall have the power to adopt such rules as it deems necessary to administer such programs. Notwithstanding the foregoing provisions, the Board may authorize the Personnel Department to administer any program or part thereof established by ordinance pursuant to the provisions of this section, but the Board shall reimburse the General Fund of the City of Los Angeles for all necessary expenses incurred by the Personnel Department in administering these programs.

(e) **Adjustment of Subsidy Amount.** The Board, in its discretion, may by resolution increase or decrease the amount of subsidy payments to reflect changes in subsidies provided for active members, or to offset any increases or decreases in the level of benefits referred to in subsection (a) of this section or the

cost thereof as a result of changes in existing benefits or the addition of newly created benefits by federal or state funded programs.

Sec. 1620. Compliance with Certain Internal Revenue Code Provisions.

(a) Notwithstanding any other provisions of this Tier 4, the benefits payable to any person who became a Plan Member prior to January 1, 1990, shall be subject to the greater of the following limitations:

- (1) the limitations set forth in Section 415 of the Internal Revenue Code; or
- (2) the accrued benefit of the Plan Member of the Fire and Police Pension Plan (determined without regard to any amendment to the Plan made after October 14, 1987), as provided in Section 415(b)(10)(A) of the Internal Revenue Code.

(b) The benefits payable to any person who becomes a Plan Member on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code.

(c) The Council shall, by ordinance, provide such benefits as are necessary to preserve the level of benefits in effect prior to the effective date of this section.

(d) Should it be determined that the provisions of Charter Section 1608(a)(1) violate the limitations of Section 415 or the incidental death benefit provisions of the Internal Revenue Code, Section 1608(a)(1) shall be deemed inapplicable to the extent necessary to achieve compliance. The Council shall by ordinance, adopt such measures as are necessary to achieve compliance and to preserve the level of benefits in effect prior to the effective date of this section.

(e) Ordinances adopted pursuant to this section shall be adopted in the same manner as those authorized by Charter Section 1618, except any ordinances adopted shall be effective upon publication.

(f) If any of the provisions of Section 415 of the Internal Revenue Code should be repealed, the provisions of this section shall be deemed repealed to the same extent.

(g) All benefits provided pursuant to any ordinance adopted under the provisions of subsection (e) shall be administered by the Board. A separate and distinct fund or funds shall be created by the Board as required to administer such benefits. Such fund or funds shall not contain employee contributions. The Board shall also determine the manner of funding any liabilities incurred as a result of ordinances adopted pursuant to this section.

Sec. 1622. Compensation Limits.

(a) For members hired on or after July 1, 1996, the Final Average Salary taken into account to determine the benefits provided by Tier 4 shall not exceed the annual limit set forth in Section 401(a)(17) of the Internal Revenue Code and regulations thereunder for any Plan Year. This annual compensation limitation shall be adjusted automatically for each Plan Year to the amount prescribed by the Secretary of the Treasury or the Secretary's delegate. For purposes of this section, the family aggregation rules of Section 414(q)(6) of the Internal Revenue Code shall apply; provided that "family" shall include only the Member's spouse and lineal descendants who have not yet attained age 19 by the last day of the Plan Year.

(b) If any of the limitations of Section 401(a)(17) or Section 414(q)(6) should be repealed, the provisions of this section shall be deemed repealed to the same extent.

Sec. 1624. Council Authority to Maintain Tax-Qualified Status of Plan.

The Council may, by ordinance, amend the Fire and Police Pension Plan – Tier 4 to incorporate provisions of federal laws and regulations required to maintain the tax-qualified status of the Fire and Pension Plan – Tier 4. The Council also may enact ordinances to modify or repeal such provisions. Ordinances adopted pursuant to this section shall be adopted in accordance with Charter Section 1618. It is the intent of this section to facilitate compliance with the provisions of federal laws affecting the Fire and Police Pension Plan – Tier 4.

Sec. 1626. Miscellaneous Provisions.

Notwithstanding any other provision of this Tier 4, the provisions of this section shall be controlling to the extent there is a conflict with another provision.

(a) **Service or Disability Pensions for Former Plan Members.** Any former Plan Member who shall believe that he or she is eligible to be paid a pension pursuant to Section 1604 or 1606 of this Tier 4, may file his or her written application for the payment of a pension pursuant to either one of the sections within the time prescribed for the filing thereof by any applicable provision of law, and the Board, if it were to determine that the contingencies provided in this Tier 4 for the payment thereof had happened or occurred as to such former Plan Member and if there is no legal bar or defense to the granting to him or her of such pension or to any judicial action or proceeding which could be brought by him or her with respect thereto, shall grant him or her the pension in accordance with his or her written application.

(b) **Adoption of Board Rules to Comply with Federal or State Law.** If at any time after December 8, 1980, federal or state law should become preemptive or controlling with respect to the provisions of this Tier 4, the Board shall have the power to adopt such rules as may be necessary to comply with such federal or state law. Such rules shall be adopted upon the advice and with the concurrence of the City Attorney.

(c) **Payroll Deductions and Years of Service Credit for Overtime.** Whenever a Plan Member, for overtime work, shall take a period of time off with pay:

- (1) a deduction for pension purposes shall be made from such pay but only in the same amount as that which would have been deducted from his or her salary if such period had been one of regular work; and
- (2) such period shall be part of his or her Years of Service.

Whenever a Plan Member, for overtime work, shall receive a cash payment:

- (1) a deduction for pension purposes shall not be made from such payment; and
- (2) the period of overtime work for which he or she shall receive such payment shall not be part of his or her Years of Service.

(d) **Coordination with Deferred Compensation Plan.** In the event the City establishes a deferred compensation system applicable to the members of the Fire and Police Pension Plan – Tier 4, the Board shall prescribe rates of contributions and benefits so that the interest of the City in protecting the Plan and

the interest of the Plan Members in pension benefits are protected when compared with contributions and benefits which would have been received had deferred compensation not been instituted.

Sec. 1628. Social Security Participation.

(a) **Implementation Procedure for Social Security Participation.** Should Social Security participation be mandated or made available to Plan Members by federal legislation amending the Social Security Act or by action taken by the City or by Plan Members as provided by law, the following provisions shall govern the manner in which such participation by Plan Members is to be implemented and the limitations hereinafter set forth shall be controlling unless federal law is contrary to these provisions, is in conflict therewith and is clearly intended to be preemptive. Should applicable provisions of federal law in any respect differ from the provisions contained in this section and should they be determined to be preemptive as to any part thereof, then and in that event, those provisions of this section not affected by such federal law shall remain in full force and effect.

(b) **Council Authority to Coordinate Benefits and Contributions.** As to the rights and entitlement to benefits of Plan Members participating in such Social Security coverage, the Council shall have the power and authority, subject to the veto of the Mayor, to adopt ordinances modifying the benefits and conditions of entitlement provided in this Tier 4, including adjustments of Plan Member contributions to the Fire and Police Pension Plan – Tier 4 as hereinafter more specifically provided and subject to the limitations stated herein.

(c) **Supermajority Vote Required.** Ordinances adopted pursuant to this section must be approved by not less than two-thirds of the membership of the Council, subject to the veto of the Mayor and re-adoption by the Council by a vote of not less than three-fourths of the membership of Council. No such ordinance may be finally adopted by the Council until the expiration of at least 30 days after its first presentation to the Council, nor until after a public hearing has been held thereon. Any ordinance adopted pursuant to this section shall go into effect upon publication.

(d) **Integration of Social Security and Pension Plan.** Any participation in Social Security coverage shall be by integration with the benefits provided by this Tier 4 and shall not be in addition to the benefits provided in the Fire and Police Pension Plan – Tier 4. Integration is to be defined in harmony with the provisions of the Social Security Act and must be in substantial compliance with the rules and regulations governing the Act. Benefits provided by an integrated system must be at least equal to the benefits offered by the Fire and Police Pension Plan – Tier 4 prior to such integration. The level of integration may be periodically adjusted by the Mayor and Council to ensure an adequate level of integration.

(e) **Minimum Plan Member Contributions.** Plan Members participating in Social Security shall have their contributions to the Fire and Police Pension Plan reduced but Plan Members must contribute at least 2% of salaries to the integrated Fire and Police Pension Plan – Tier 4.

Sec. 1630. Inoperability of Tier 4.

Should it be determined that the provisions of Tier 4 violate any federal or state laws or the Internal Revenue Code, which render either of such sections inoperative, then Tier 4 shall become

inoperative and service retirement benefits and vesting as provided in Section 1504 of Tier 3, and contributions of Plan Members as provided in Section 1514 of Tier 3 shall become operative in their place to the extent allowed by law. If the

provisions of Sections 1514 and 1504 of Tier 3 cannot be fully reinstated, then modifications required to comply with changes in the law shall be made by ordinance, adopted in accordance with Section 1624.

PROPOSED AMENDMENTS TO THE CHARTER

Following are two proposed amendments to the proposed Charter. The Charter as proposed includes provisions for 15 Council members elected by district. These two proposed amendments provide for an increase in the size of the Council. Neither amendment would become effective unless the proposed Charter is adopted by the voters. If neither amendment receives a majority, and if the Charter is approved by the voters, the number of Council members will remain at 15.

If either amendment receives a majority of the votes cast on it, and the Charter is adopted by the voters, then the Charter will be amended. If both receive a majority of votes cast for them, and

the Charter is adopted by the voters, then the one with the higher total number of votes in favor is adopted.

Amendment 3:

- (1) Section 241 of the Charter shall be amended to provide:
“The City Council shall consist of 21 members, elected by districts as provided elsewhere in the Charter.”

Amendment 4:

- (2) Section 241 of the Charter shall be amended to provide:
“The City Council shall consist of 25 members, elected by districts as provided elsewhere in the Charter.”

PROPOSED AMENDMENTS TO THE CHARTER

Section 1.1 of the Charter shall be amended to read:

Section 1.2 of the Charter shall be amended to read:

Section 1.3 of the Charter shall be amended to read:

Section 1.4 of the Charter shall be amended to read:

Section 1.5 of the Charter shall be amended to read:

Section 1.6 of the Charter shall be amended to read:

Section 1.7 of the Charter shall be amended to read:

Section 1.8 of the Charter shall be amended to read:

Section 1.9 of the Charter shall be amended to read:

Section 1.10 of the Charter shall be amended to read:

Notes

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